FEDERAL PAY POLICIES AND ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 31, 2007

Serial No. 110–151

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

48–812 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HENRY A. WAXMAN, California, *Chairman*

TOM LANTOS, California
EDOLPHUS TOWNS, New York
PAUL E. KANJORSKI, Pennsylvania
CAROLYN B. MALONEY, New York
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio
DANNY K. DAVIS, Illinois
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
DIANE E. WATSON, California
STEPHEN F. LYNCH, Massachusetts
BRIAN HIGGINS, New York
JOHN A. YARMUTH, Kentucky
BRUCE L. BRALEY, Iowa
ELEANOR HOLMES NORTON, District of Columbia
BETTY McCOLLUM, Minnesota
JIM COOPER, Tennessee
CHRIS VAN HOLLEN, Maryland
PAUL W. HODES, New Hampshire
CHRISTOPHER S. MURPHY, Connecticut
JOHN P. SARBANES, Maryland
PETER WELCH, Vermont

TOM DAVIS, Virginia
DAN BURTON, Indiana
CHRISTOPHER SHAYS, Connecticut
JOHN M. McHUGH, New York
JOHN L. MICA, Florida
MARK E. SOUDER, Indiana
TODD RUSSELL PLATTS, Pennsylvania
CHRIS CANNON, Utah
JOHN J. DUNCAN, JR., Tennessee
MICHAEL R. TURNER, Ohio
DARRELL E. ISSA, California
KENNY MARCHANT, Texas
LYNN A. WESTMORELAND, Georgia
PATRICK T. McHENRY, North Carolina
VIRGINIA FOXX, North Carolina
BRIAN P. BILBRAY, California
BILL SALI, Idaho
JIM JORDAN, Ohio

PHIL SCHILIRO, *Chief of Staff*
PHIL BARNETT, *Staff Director*
EARLEY GREEN, *Chief Clerk*
DAVID MARIN, *Minority Staff Director*

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

DANNY K. DAVIS, Illinois

ELEANOR HOLMES NORTON, District of Columbia
JOHN P. SARBANES, Maryland
ELIJAH E. CUMMINGS, Maryland
DENNIS J. KUCINICH, Ohio, *Chairman*
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts

KENNY MARCHANT, Texas
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, Florida
DARRELL E. ISSA, California
JIM JORDAN, Ohio

TANIA SHAND, *Staff Director*

CONTENTS

FEDERAL PAY POLICIES AND ADMINISTRATION

TUESDAY, JULY 31, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 3:30 p.m. in room 2154, Rayburn House Office Building, Hon. Danny K. Davis (chairman of the subcommittee) presiding.

Present: Representatives Davis of Illinois, Sarbanes, Lynch, and Marchant.

Staff present: Tania Shand, staff director; Caleb Gilchrist, professional staff member; Lori Hayman, counsel; Cecelia Morton, clerk; Ashley Buxton, intern; and Alex Cooper, minority professional staff member.

Mr. DAVIS OF ILLINOIS. I call the subcommittee to order and thank all of you who have been inconvenienced.

Given the fact that this is the last week before our proposed summer recess, lots of things are going on, and schedules are being changed, and there is a strong effort to get as many things done before the end of Friday as we possibly can. As a matter of fact, we passed so many bills yesterday until I couldn't keep count of them, so nobody can suggest that this Congress is not working. As a matter of fact, it is working, and working well.

Welcome Ranking Member Marchant, members of the subcommittee, hearing witnesses, and all of those in attendance. Welcome to the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia hearing on Federal Pay Policies and Administration.

Hearing no objection, the Chair, ranking member, and subcommittee members will each have 5 minutes to make opening statements, and all Members will have 3 days to submit statements for the record.

I know that my ranking member is on the way and will be here, so I will just go ahead, and if he comes and wishes to have an opening statement we will make arrangements for that to happen.

Welcome Ranking Member Marchant, members of the subcommittee, hearing witnesses, and all of those in attendance. More than 100 Federal agencies employ about 2.7 million civilian workers, approximately 2 percent of the total U.S. work force, in jobs representing more than 800 occupations. In March 2007 the Congressional Budget Office issued a report entitled Characteristics

and Pay of Federal Civilian Employees. The report examined a subset of the civilian work force, approximately 1.4 million salaried workers, not including the employees of the Postal Service, who fill full-time, permanent positions in the executive branch.

The report states that, while there is a common view that the Federal Government is a monolithic employer with a standard pay schedule and hiring rules, Federal agencies, through current laws, executive orders, and regulations, have been granted considerable latitude in hiring and setting pay. This hearing is being held to examine the Federal Government's wide range of pay and administration policies.

Federal agencies compete with one another for talent. From 2001 to 2005, more than 50,000 employees transferred from one agency to another. While these employees saw their basic pay rise about $1,800, there is some concern that, as the Federal Government's pay system becomes more fragmented, it will make it more difficult for employees to transfer from one agency to another.

Furthermore, this subcommittee has much to learn about how pay is established in the Federal Government and what roles the Bureau of Labor Statistics, the Federal Salary Council, and the Federal Prevailing Rate Advisory Committee play in setting pay. We need to know more about agencies' experience with pay for performance systems and market-based compensation studies. These issues are critical as the Federal Government seeks to recruit and retain a quality work force.

This hearing is the first step in examining Federal pay issues. Future hearings will take a more focused look at pay compression, pay for performance systems, and market-based compensation studies. Today's witnesses will help set the foundation for those hearings.

[The prepared statement of Hon. Danny K. Davis follows:]

STATEMENT OF CHAIRMAN DANNY K. DAVIS
AT THE
SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE,
AND THE DISTRICT OF COLUMBIA
HEARING ON
FEDERAL PAY

July 31, 2007

Welcome, Ranking Member Marchant, members of the Subcommittee, hearing witnesses, and all those in attendance. More than 100 federal agencies employ about 2.7 million civilian workers, approximately 2 percent of the total U.S. workforce, in jobs representing more than 800 occupations.

In March 2007, the Congressional Budget Office (CBO) issued a report entitled, "Characteristics and Pay of Federal Civilian Employees." The report examined a subset of the civilian workforce: approximately 1.4 million salaried workers – not including the employees of the Postal Service- who fill full-time permanent positions in the executive branch.

The report states that while there is a common view that the federal government is a monolithic employer with a standard pay schedule and hiring rules, federal agencies, through current laws, executive orders, and regulations, have been granted considerable latitude in hiring and setting pay.

This hearing is being held to examine the federal government's wide range of pay and administration policies. Federal agencies compete with one another for talent. From 2001 to 2005, more than 50,000 employees transferred from one agency to another. While these employees saw their basic pay rise about $1,800, there is some concern that as the federal government's pay system becomes more fragmented, it will make it more difficult for employees to transfer from one agency to another.

Furthermore, the Subcommittee has much to learn about how pay is established in the federal government, and what roles the Bureau of Labor Statistics, the Federal Salary Council, and the Federal Prevailing Rate Advisory Committee play in setting pay. We need to know more about agencies' experience with pay-for-performance systems and market-based compensation studies.

These issues are critical as the federal government seeks to recruit and retain a quality workforce. This hearing is the first step in examining federal pay issues. Future hearings will take a more focused look at pay compression, pay-for-performance systems, and market-based compensation studies.

Today's witnesses will help set the foundation for those hearings. I would like to ask unanimous consent that the statements of Rep. Barney Frank, who could not be here today due to a Full Committee markup he had to chair, Rep. Luis Fortuño, the Senior Executive Association, and the Forum of United States Administrative Law Judges, be submitted for the record.

Thank you.

Mr. DAVIS OF ILLINOIS. I would like to ask unanimous consent that the statements of Representative Barney Frank, who could not be here today due to a full committee markup he had to chair; Representative Luis Fortuño; the Senior Executive Association; and the Forum of U.S. Administrative Law Judges be submitted for the record. Hearing no objection, that will be the order.

[The prepared statements of Hon. Barney Frank, Hon. Luis G. Fortuño, the Senior Executive Association, and the Forum of U.S. Administrative Law Judges follow:]

BARNEY FRANK
4TH DISTRICT, MASSACHUSETTS

2252 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2104
(202) 225-5931

29 CRAFTS STREET
SUITE 375
NEWTON, MA 02458
(617) 332-3920

558 PLEASANT STREET
ROOM 309
NEW BEDFORD, MA 02740
(508) 999-6462

THE JONES BUILDING
29 BROADWAY
SUITE 310
TAUNTON, MA 02780
(508) 822-4796

Congress of the United States
House of Representatives
Washington, DC

TESTIMONY OF CONGRESSMAN BARNEY FRANK

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

"FEDERAL PAY POLICIES AND ADMINISTRATION"

JULY 31, 2007

Thank you, Mr. Chairman for providing me with the opportunity to appear before the Subcommittee about an important pay equity issue affecting federal hourly wage workers in portions of Massachusetts and Rhode Island. I am joined by my colleague Representative Patrick Kennedy who is also here today as a witness, and I would add that Congressmen McGovern and Langevin are working with us on this issue.

We are urging that action be taken to treat Southeastern Massachusetts and Rhode Island prevailing rate workers – federal employees who could be described as "blue collar" – in the same way as their white collar counterparts for the purposes of calculating their pay. In this case, such a change would mean that their pay would be calculated as if they worked in the higher wage Greater Boston area.

The federal government has over the years developed mechanisms by which payments that are in general standardized on a national basis can be adjusted to reflect the economic differences that exist in various regions around the country. The locality pay system is one of these systems, and it has helped us to better take into account the reality that that a dollar may go further in some parts of the country than others. But, even within smaller regions there may be economic variations that need to be taken into account.

In the region that my three colleagues and I represent, from an economic perspective, taking into account commuting patterns, job opportunities and affordable housing trends, Southeastern Massachusetts and Rhode Island are for all intents and purposes part of the Greater Boston economy. It is not unusual for workers of all kinds to commute from Rhode Island or Southeastern Massachusetts to the Greater Boston area and vice versa. Indeed, the economic integration of these areas has been recognized compensate salaried federal employees in all these areas as if they worked in Greater Boston. There is no doubt, from my perspective, that hourly rate workers in the region face the same economic realities as their salaried colleagues, and that they should be paid accordingly.

This matter was first brought to my attention by constituents of mine who work as mechanics, repairing U.S. Navy vehicles. These and other prevailing rate jobs are important components of the federal government's overall efforts, and it comes down to a question of simple fairness – I believe that the mechanics and others who perform hourly wage jobs for the federal government within the same regional economy should be paid according to the same mechanism used for the pay of other federal employees.

The Federal Prevailing Rate Advisory Committee was established to address inequities of this sort, and it would have been my preference for this specific issue to be resolved through the work of the Committee. Unfortunately, when the position of Committee Chair became vacant, the Office of Personnel Management failed to appoint a replacement for a period of nearly two years. As a result, even though the Southeastern Massachusetts-Rhode Island matter was formally brought to the attention of the committee, no official action on it could be taken by the committee in the absence of a Chair.

Because of our concern about this matter, my colleagues and I introduced legislation (H.R. 2375) calling for the inequity to be rectified. In addition, as a result in particular of Congressman Kennedy's efforts, the Financial Services and General Government appropriations subcommittee included language in the report accompanying its Fiscal Year 2008 legislation urging action on this matter. Subsequently, OPM appointed Mr. Charles Brooks as Chairman of the committee. On July 24, my colleagues and I wrote the attached letter to Mr. Brooks, including a copy of H.R. 2375 and the relevant appropriations language, all of which I ask to include for the record with my testimony.

Mr. Chairman, that letter indicates that Mr. Brooks would be attending this hearing. I understand now that he will not be in attendance, apparently because his tenure as Chairman does not start until tomorrow. In light of the unacceptably long delay in filling the Chairmanship, I urge him to work with the advisory committee to resolve the matter of the Southeastern Massachusetts-Rhode Island prevailing wage inequity as expeditiously as possible. In addition, I urge the subcommittee to do everything possible to bring about that result, and to take whatever steps may be needed to prevent this kind of long delay in the future in the ability of the Federal Prevailing Rate Advisory Committee to take effective action.

Thank you for inviting me to testify today. I would be pleased to answer any questions.

Congress of the United States
House of Representatives
Washington, DC 20515

July 24, 2007

Charles Brooks
Chairman
Federal Prevailing Rate Advisory Committee
U.S. Office of Personnel Management
Room 5524
1900 E Street, N.W.
Washington, DC 20415

Dear Chairman Brooks:

Congratulations on your appointment as Chair of the Federal Prevailing Rate Advisory Committee. We are writing to urge you to address as expeditiously as possible a serious pay inequity affecting the area we represent in Congress.

As you may be aware, we have introduced legislation (H.R. 2375, a copy of which is attached) calling for prevailing rate federal employees in the Narragansett Bay, Rhode Island Wage Area to be treated as if they worked in the Boston, Massachusetts Wage Area. At present, white collar federal workers in the first area are treated as if they were working in the Boston area. As federal elected officials from the area who are very familiar with the economy, job opportunities and commuting patterns in the region, we believe there is no justification for this disparate treatment. Rather, in our view, there is a very clear case for treating Rhode Island area prevailing rate workers (a group which includes workers in much of Southeastern Massachusetts) as being in the Boston area.

Indeed, the House Appropriations Committee recognized the importance of addressing this matter, by urging -- in the report accompanying the Fiscal Year 2008 Financial Services and General Government appropriations bill -- the consideration of changes in law to address this disparity and noting that "[t]here is no justification for different treatment between the two categories of employees." A copy of the relevant portion of the report is attached. We appreciate that fact that you were only recently appointed to your current position. However, we wanted to call this matter to your attention and urge you to give it the earliest possible consideration because, owing to the lengthy vacancy which you have now filled, the committee has not been able to give this matter any formal consideration for an unacceptably long period of time.

We are aware that you have been invited to testify at the July 31 hearing on federal pay issues that has been scheduled by the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia. We expect to submit testimony at that hearing in support of the change in treatment of the prevailing rate employees in our area, as described above. We look forward to hearing from you at that hearing about your plans with respect to this very important issue.

Thank you for your attention to this matter. We look forward to your response.

Barney Frank
U.S. Rep. Barney Frank

Patrick J. Kennedy
U.S. Rep. Patrick Kennedy

Jim McGovern
U.S. Rep. James McGovern

Jim Langevin
U.S. Rep. James Langevin

I

110TH CONGRESS
1ST SESSION

H. R. 2375

To provide wage parity for certain prevailing rate employees in Southeastern Massachusetts and Rhode Island.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2007

Mr. FRANK of Massachusetts (for himself, Mr. MCGOVERN, Mr. KENNEDY, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

---

A BILL

To provide wage parity for certain prevailing rate employees in Southeastern Massachusetts and Rhode Island.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Southeastern Massachusetts and Rhode Island Federal Worker Fairness Act of 2007".

SEC. 2. WAGE PARITY FOR CERTAIN PREVAILING RATE EMPLOYEES IN SOUTHEASTERN MASSACHUSETTS AND RHODE ISLAND.

(a) IN GENERAL.—For purposes of determining the rate of pay for any prevailing rate employee working in the Narragansett Bay, Rhode Island Wage Area, the wage schedule and rates to be used shall be the same as if such employee were instead working in the Boston, Massachusetts Wage Area.

(b) DEFINITIONS.—For purposes of this section—

(1) the term "prevailing rate employee" has the meaning given such term by section 5342 of title 5, United States Code; and

(2) the term "wage area" refers to a wage area under section 5343 of title 5, United States Code.

(c) REGULATIONS.—The Office of Personnel Management may prescribe any regulations necessary to carry out the purposes of this Act.

SEC. 3. EFFECTIVE DATE.

This Act shall apply with respect to pay periods beginning on or after the date of the enactment of this Act.

○

110TH CONGRESS *1st Session* | HOUSE OF REPRESENTATIVES | REPORT 110–207

FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS BILL, 2008

JUNE 22, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SERRANO, from the Committee on Appropriations, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2829]

The Committee on Appropriations submits the following report in explanation of the accompanying bill making appropriations for financial services and general government for the fiscal year ending September 30, 2008.

INDEX TO BILL AND REPORT

★36–212

COMMITTEE RECOMMENDATION

The Committee recommends a general fund appropriation of $101,765,000 for OPM, a decrease of $9,840,000 below the enacted fiscal year 2007 level and the same as the fiscal year 2008 budget request. The recommendation includes $5,991,000 for the Enterprise Human Resources Integration project, $1,351,000 for the Human Resources Line of Business project, $340,000 for the E-Payroll project, and $170,000 for the E-Training program.

The Committee also recommends $123,401,000 for administrative expenses to be transferred from the appropriate trust funds. The amount includes $26,465,000 for retirement systems modernization, an increase of $11,465,000 over the request. The Committee expects that this amount, together with a recent reprogramming approved by the Committee, will keep the project largely on schedule. The Committee directs OPM to provide the Committee with quarterly reports, starting on January 31, 2008, on the implementation of "waves" for activating Federal employees under the retirement systems modernization program.

The Committee appreciates the importance of OPM's Federal Human Capital Survey in providing data for independent analyses of Federal employee satisfaction. OPM shall continue to make agencies' survey data publicly available in a consistent and consolidated format, and in a timely manner.

The Committee urges OPM, working with the appropriate authorizing committees, to consider changes in law to bring Federal prevailing rate employees currently working in the Narragansett Bay, Rhode Island Wage Area within the coverage of the Boston, Massachusetts Wage Area. Currently, "white collar" Federal workers in Southeastern Massachusetts and Rhode Island are included in the Boston, Massachusetts Wage Area, while "blue collar" workers are not. There is no reason for different treatment between the two categories of employees.

The Committee is aware of the vacancy at the Federal Prevailing Wage Advisory Committee at OPM. The Committee expects the OPM to report back to Congress within 90 days of enactment of this Act about the progress made on considering a wage change to the Narragansett Bay, Rhode Island Wage Area, despite the vacancy at the Committee.

OFFICE OF INSPECTOR GENERAL

Appropriation, fiscal year 2007:	
General fund	$2,061,000
Transfer from trust funds	16,278,000
Budget request, fiscal year 2008:	
General fund	1,519,000
Transfer from trust funds	16,481,000
Recommended in the bill:	
General fund	1,519,000
Transfer from trust funds	16,981,000
Bill compared with:	
Appropriation, fiscal year 2007:	
General fund	−542,000
Transfer from trust funds	+703,000
Budget request, fiscal year 2008:	
General fund	− − −
Transfer from trust funds	+500,000

Statement of the Honorable
Luis G. Fortuño
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
July 31, 2007

Good afternoon, Mr. Chairman, Members of the Subcommittee and Director Springer. Thank you for the opportunity to testify before you today regarding OPM's proposal to phase out COLA in favor of Locality Pay and the impact it might have on the approximately 17,000 federal and USPS workers in Puerto Rico.

On May 30, 2007, the Office of Personnel Management submitted to Speaker Pelosi a legislative proposal entitled the "Locality Pay Extension Act of 2007". This proposal would extend locality pay to white collar Federal Employees in the non-foreign areas, including Puerto Rico, while reducing cost-of-living allowances gradually. According to Director Springer's letter to Speaker Pelosi, the changes will take place over a seven year period beginning in 2008. Ever since this proposal was made public, I have received countless calls and letters from federal employees in my District expressing their serious concerns about the negative impact the locality pay and COLA phase-out will have on the Island.

The COLAs are based on the higher cost of goods and services in each region, while locality pay is based on the difference in wages paid to federal and private-sector/state and local government employees. OPM establishes COLA rates based on price differences between the COLA area and the Washington, DC area, plus an adjustment factor. Locality pay, on the other hand, provides for pay adjustments based on survey comparisons with non-federal rates on locality basis. Locality pay is based on

the premise that federal jobs, in terms of wages, lag behind comparable jobs in the private sector and/or the state and local sector. However, the reality is that federal jobs do pay more in some geographical locations, including Puerto Rico. Recent salary data analysis show that federal workers, on average, are paid almost 50 percent more than employees in the private sector. Phasing out COLA, a program that is based on measurable costs of living, to phase in a program whose premise is being currently challenged is cause for concern. Of particular concern is the fact that the government's Pay Agent could change its current policy not to pay any locality rate under the Rest of the United States (RUS). If the policy changes, Puerto Rico would not be guaranteed the minimum RUS rate, and federal salaries in Puerto Rico could decrease dramatically.

Cost of living allowances are exempt from federal taxes, are considered non-taxable income by the Puerto Rican government, and do not count towards retirement computations. Locality pay is taxable income for federal and local tax purposes and counts towards federal retirement computations. However, in locations like Puerto Rico, where the average federal employee is most likely already in the highest state income tax bracket (30 to 33% of gross pay), and is therefore eligible to the Foreign Tax credit when filing the Federal Income Tax return, (that is, has no federal tax obligation) the OPM proposal does next to nothing in terms of protecting take home pay. In fact, most federal employees in Puerto Rico will certainly experience a gradual, but most likely constant, decrease in take home pay due to the increase in tax responsibility.

Contrary to the cost-of living allowances rates, locality pay is not a guaranteed amount, and even the lowest locality pay rate, known as the Res of the US (RUS), is not a

percentage written into law or regulation, and is determined by the President's Pay Agent.

Furthermore, OPM states that the current legislative proposal will address the perceived disparities between federal employees under the Civil Service retirement systems and the newer FERS (Federal Employees Retirement System) that includes a mandatory Thrift Savings Plan. OPM has provided some examples with numbers as to how the proposed legislation would affect an average Puerto Rican employee. However, these examples do not take into consideration that many federal employees in Puerto Rico are under the new retirement system, FERS, and that FICA taxes are deducted from their salaries. In my opinion, OPM must explain if there are any difference in terms of the impact of the conversion to locality pay between employees under the Civil Service retirement systems, and the federal employees under FERS, as all employees currently under the civil service system will likely retire sooner than the newer employees under FERS.

OPM has stated that phasing-in the conversion to locality pay would mitigate the negative impact of terminating the non-taxable COLA. Under the current proposal, it takes 7 years before locality pay is implemented in full, which is very disadvantageous to federal employees who are close to retirement. A federal employee close to retirement would have to work an additional three years in order to be able to benefit from the salary increase. Meanwhile, a younger federal employee will have the take home pay reduced.

Even though federal employees in Puerto Rico have serious concerns about the method been used by OPM to collect rental data as part of the COLA price surveys which have resulted in two COLA reductions (2006 COLA rate reduction of 1% & a second 1%

reduction scheduled to take effect on September 2007), I do not believe the current locality pay proposal will remedy the current disparities in pay and retirement benefits of federal employees in Puerto Rico. Instead, I would urge OPM to give careful consideration to the existing issues and concerns regarding the data collection when conducting housing surveys in Puerto Rico. Finding an alternative method to collect rental data will not be outside the scope of the Caraballo Settlement and will certainly produced more accurate and equitable treatment to over 17,000 federal employees.

Thank you.

P.O. Box 44808 • Washington D.C. 20026 • (202) 927-7000 • Fax (202) 927-5192 • www.seniorexecs.org

STATEMENT

of

CAROL A. BONOSARO

President

SENIOR EXECUTIVES ASSOCIATION

Submitted for the Record of the

FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUBIA
SUBCOMMITTEE OF THE HOUSE OVERSIGHT & GOVERNMENT REFORM
COMMITTEE

July 31, 2007

Chairman Davis and Distinguished Members of the Subcommittee:

Thank you for the opportunity to submit this written statement concerning federal pay. As you know the Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions.

SEA is pleased the Subcommittee has undertaken a comprehensive look at pay for employees of the federal government. It is our understanding that the Subcommittee plans to review, in particular, pay compression and market-based compensation issues during this hearing. SEA is concerned that the myriad of alternative pay systems geared toward market based and performance based compensation are both fragmenting the federal pay system and leading to exacerbated pay compression problems. Fragmentation makes effective oversight of federal pay policy especially difficult and also places some agencies at a competitive disadvantage compared to others. Pay compression is increasing and, while we applaud efforts to provide a competitive salary to valued employees, we must ensure that there is a balance that ensures senior civil service positions remain desirable. At this time, we do not believe this balance exists.

The career Senior Executive Service has the longest running pay for performance experience in government, dating back to the statutory creation of the SES corps in 1978 which included provisions for both performance awards and Presidential Rank awards. Recent changes to the system in 2003 relieved some of the pressure related to SES pay compression by providing a higher pay cap, but also created and exacerbated other problems with SES pay. This statement describes the essence of the state of SES pay for performance experience to date, and recommends several short-term solutions. We look forward to working with the Subcommittee to make more substantial changes for the long term.

For more than a decade, Senior Executives in the federal government have been the great losers when it comes to pay. Both the percent and actual dollar gap between the top earning potential as a Senior Executive and the top earning potential of a General Schedule employee has shrunk considerably over this period despite efforts by Congress to make the SES more attractive. At this point, there is little incentive beyond prestige—and the opportunity to make a greater contribution to government—for moving from a General Schedule (GS) position to on in the SES. Without a change that addresses the pay situation of the SES, there will remain a powerful disincentive for highly qualified employees to compete for SES positions and fill the wave of retirements that is already beginning.

Since 1994, the highest salary a GS employee in the locality pay area of Washington-Baltimore-Northern Virginia could attain has risen 59 percent. In the same time, the highest salary a Senior Executive in the same area could attain has risen only 39 percent. In 1994, a top earning SES living in the Washington locality pay area made $30,342 more than the highest earning GS employee in the area—the equivalent of almost $41,000 today with inflation. In

2007, a top earning SES in the Washington locality pay area makes only $24,529 more than the highest earning GS employee in the same area, and the gap will only continue to shrink unless action is taken.

Many point to the respectable salary cap of $168,000 for Senior Executives in agencies with certified performance management systems and say this should suffice. Although most executives would earn much more in the private sector, they have been willing to accept pay which was not comparable because of their desire to do the most important work in the nation. The fact is, however, that most Senior Executives do not earn the maximum available pay. Further, the current pay for performance system is structured in such a way that many of those who work at levels below the Senior Executive Service are reaching well into the SES pay cap.

For example, one SEA member working in a very high cost-of-living area makes under $120,000. He has never been rated below Fully Successful or received discipline. Being a member of the SES, he receives no locality pay, and is not permitted to be granted compensatory time. This means that GS-15 employees working for this Senior Executive are receiving salaries $20,000 more than he is, and they are also eligible for compensatory time for travel or work after duty hours or on weekends.

At the end of this year, GS-15 employees working for this Senior Executive will receive a rightly deserved annual salary and locality adjustment, probably amounting to a 3.5 to 5.5 percent increase in their take home pay. Even if the SES receives a top rating for his job, he is historically unlikely to receive a salary adjustment even close to that of the GS employees, especially with current budget concerns. Many Senior Executives rated fully successful receive salary increases around one percent, and some receive no increases at all. This is not a hypothetical example, but one of a real member of the Senior Executives Association and the Senior Executive Service, who is seriously considering requesting a fall back to a GS-15 position. With these facts on the table, why would a GS-15, particularly those at the higher step levels, join the Senior Executive Service?

The problem is getting worse. Many agencies have sought to adjust their pay bands or employ other methods to effectively move some of their GS-15's above the cap of Executive Schedule Level IV. Under its partially-implemented National Security Personnel System (NSPS), DOD has reportedly increased the ceiling for prior GS-15 (10) employees by 5%, creating a new ceiling for Pay Band 3. When combined with locality pay, the top GS pay went from $143,000 to $150,000. Adding the 3.5 percent cost-of-living increase that is likely for next year, the total ceiling will be increased to $155,000. Also under NSPS, GS employees can now get substantial bonuses that had been limited in the past to no more than $7500. In a recent mock pay pool exercise within NSPS, some employees reportedly could potentially receive bonuses in excess of $11,000. This rivals the bonuses provided to Senior Executives, the last incentive that makes the SES corps somewhat enticing from a fiscal standpoint.

At the National Institute of Standards and Technology (NIST – part of the Department of Commerce), under its Alternative Personnel Management System, Level V (GS-15) Division

Chiefs are paid at the GS maximum of $145,400. On top of the $145,400 salary, however, these Division Chiefs receive a retention bonus prorated over the 26 pay periods. This retention bonus is currently calculated at 5%, effectively raising their pay to $152,670.

Since 2000, in conjunction with OPM, the Department of the Navy, Naval Sea Systems Command Warfare Centers has run a Laboratory Personnel Demonstration Project. As part of this demonstration project, a new position called SSTM (Senior Scientific Technical Manager), has been established, one which itself constitutes a new, separate "broad band level ND-VI." The occupants of these positions are not considered to measure up to the normal Senior Level (SL), Scientific and Professional (ST) classifications, but, according to the Federal Register announcement, are thought to "substantially exceed the GS-15 classification criteria." Most individuals in these positions have scientific and technical expertise, but also possess substantial supervisory duties, many supervising other GS-15s. The salary range for these positions is "a minimum of 120% of the minimum rate of basic pay for GS-15, with the maximum rate of basic pay established at the rate of basic pay (excluding locality pay) for SES Level 4 (ES-4)." It is notable that this is precisely the basic pay formerly given to ES Senior Executives, and still given to SLs and STs. They are the same minimums and maximums as apply to Senior Executives in performance appraisal systems not certified by OPM. Though the project was at the outset scheduled to last only 5 years, we have been informed that it continues and that a number of SSTMs are still employed.

Many other pay systems rival the SES corps for pay and provide greater benefits without the inherent risk of being in the SES. When addressing groups of Senior Executives and candidates for the SES, I regularly hear reports of talented, experienced GS-15's who have no interest in competing for promotion to the Senior Executive Service, to earn salaries of as little as $120,000 a year in high-cost areas, work long hours, receive no locality pay or yearly automatic cost-of-living pay adjustments, earn no comp time, and have no assurance that they will not be moved to a new geographical area at the discretion of their agency. I have received these reports, as well, from staff of the Federal Executive Institute, with regard to the GS-14's and 15's who attend courses there. With 90% of the SES eligible for retirement over the next 9 years, Congress must immediately address the risk-reward ratio in the SES corps.

Before addressing several recommendations to begin to do so, it is worth noting the degree to which the Executive Schedule has fallen behind in comparison to the General Schedule. EL II is the pay cap for SES employees in departments and agencies with performance management systems certified by OPM. It is also the pay cap for Members of Congress. SEA began an analysis of Executive Schedule pay in 1994. At that time, EL II was frozen at $ 133,600 and remained so until 1998, though it was again frozen in 1999. ***If EL II had been increased at the same annual rate as that of the General Schedule in the Washington area from 1994 to 2007, that pay cap would now be $221,300, instead of $ 168,000.***

SEA recommends Congress take the following steps immediately to shore up the SES pay for performance system. First, require agencies to provide a yearly minimum, market-based pay adjustment to all Senior Executives rated fully successful or better. While additional

performance considerations can be made in addition to the minimum increase, this will ensure that good executives receive at least a minimal raise and do not lose purchasing power. Second, include performance awards in "high-3" retirement calculations for Senior Executives. Performance awards have become a very important component of compensation for our best Senior Executives, and including them in the retirement plan only makes sense.

Long-term, Congress needs to take a hard look at the risk, pay and incentives in the current SES pay for performance system. The current system is not attractive and will continue to dissuade many of the best employees from moving to the highest ranks of the career civil service.

This examination of the SES pay system is necessary to attract and retain the finest candidates for executive positions necessary for the day to day operation of our government, those who provide continuity and institutional memory and are especially critical during the transition from one administration to another. Compensation should be reformed to attract, retain and appropriately award the best leaders who take on this task.

STATEMENT

OF

JUDGE BRUCE L. BIRCHMAN

LEGISLATIVE CHAIRMAN

FORUM OF UNITED STATES ADMINISTRATIVE LAW JUDGES

Before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND DISTRICT OF COLUMBIA

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

Oversight Hearing on Federal Employee Pay

July 31, 2007

Mr. Chairman, members of this subcommittee, and members of the staff. On behalf of the Federal Administrative Law Judge community, thank you for this opportunity to discuss a very significant issue, compression of the pay schedule for the corps of Federal Administrative Law Judges (ALJs). I am Bruce L. Birchman, an Administrative Law Judge with the Federal Energy Regulatory Commission. My 43 years of federal service to date, includes 29 years as an ALJ at FERC and three years as an ALJ at the Social Security Administration. Since 1983, I have been the Legislative Chairman of the Forum of United States Administrative Law Judges (Forum).

My testimony is presented on behalf of the Forum, The Federal Administative Law Judges Conference, and the Association of Administrative Law Judges—professional organizations which represent the 1,370 ALJs in the 29 federal agencies shown in Appendix A.

The Administrative Procedure Act of 1946 and ALJ Decisional Independence

Federal ALJs, formerly called hearing examiners,[1] are creatures of statute. The position was created by the Administrative Procedure Act of 1946 (APA), 5 U.S.C. §551 *et. seq.* (2007), to ensure fair and impartial Federal agency administrative hearings of significant disputes involving issues of national importance. As noted by a prominent legal scholar,

---

[1] In 1972, the Civil Service commission, the predecessor to OPM, changed the title from "hearing examiner" to "administrative law judge". 37 Fed. Reg. 16, 787 (1972). In 1978, in order to avoid confusion with other non-APA presiding officers, the Congress made the new title a matter of statute. *Pub. L. No. 101-509, 104 Stat. 1427* (1978).

> "[T]he big story of the [APA] is that it transformed the disrepected crew of agency hearing examiners into the highly respected and highly protected corps of ALJs we know today...Unable to force an external separation[of the adjudicatory function from the rule-making, investigation and prosecution functions] the proponents of the New Deal (supported by all members of the Attorney Generals committee)...went as far as they could in the direction of making the person who hears the witnesses into a true judge. Thus, the array of independence protecting provisions in the [APA]."[2]

Prior to the passage of the APA, administrative adjudicators were seen as "mere tools of the agency concerned."[3] Seeking to provide private parties with more confidence they would be treated fairly during the administrative process, Congress provided ALJs with decisional independence and prohibited them from engaging in *ex parte* communications.[4] Under the APA, an ALJ is the "person primarily responsible for developing an accurate and complete record and a fair and equitable decision in a formal adjudicative proceeding."[5] Hearings before ALJs serve as the principal appellate forum within administrative agencies prior to judicial review.

The judicial function performed by ALJs is known to the legal world as a key element of the process of review of agency actions and a necessary step in the exhaustion

---

[2] Michael Asimov, *Administrative Law Judges: The Past and the Future*, NYSBA Government, Law and Policy Journal at 12 ,15 (2000).

[3] *Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 128, 131 (1953). *See also* Alfred C. Aman, Jr. and William T.Mayton, *Administrative Law* §8.52 (1993). FALJC is the successor to the Federal Trial Examiners Conference

[4] *See* United States Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* at 53-56 (1947).

[5] Administrative Conference of the United States, *Manual for Administrative Law Judges* at 4 (3d ed. 1993).

of administrative process before judicial review. It has worked well and become a model for the fifty States, the territories, and the international legal community.

The adjudicative function performed by ALJs and the delicately balanced relationship that ALJs must maintain with their employing agencies distinguish ALJs from the rest of an agency's workforce. The primary goal of the APA is to ensure full, fair, and impartial hearings. Central to this goal is the requirement for the merit-based appointment of impartial and independent administrative law judges. 5 USC §3105 (2007).

To ensure fair and impartial hearings and the decisional independence of the administrative law judiciary, the APA established unique rights and responsibilities applicable exclusively to ALJs. The seminal requirement of the APA is that hearings be conducted on the record by merit-appointed ALJs. Agencies are required to assign cases to each ALJ on a rotation basis to the maximum extent practical. The APA exempts ALJs from the establishment of performance standards for federal agency employees. 5 U.S.C. §4301(2) (D) (2007). In this respect, OPM regulations prohibit an agency from rating the performance of an ALJ and the granting of performance bonuses and awards to ALJs. 5 C.F.R. §930.206 (2007). The APA insulates ALJs from supervision by any person performing an investigative or prosecuting function for the agency. *Ex parte* communications are prohibited. As protection against agency influence, ALJs may be disciplined only for cause established by the complaining agency in an APA on-the

record hearing before a Merit System Protections Board ("MSPB") ALJ.[6] 5 U.S.C. § 7521 (2007).

This panoply of APA protections is designed to ensure that ALJs decide cases independent of agency influence or pressure. Agency rating and evaluation of the performance of an individual ALJ or the receipt of performance-based awards or bonuses could constitute a direct or subtle attempt to interfere with the decision-making process and, thus, improperly affect the outcome of a case.

ALJs adjudicate controversies involving significant and diverse matters. These matters include antitrust, banking practices, securities violations, commodity futures, education grants, environmental degradation, food and drug safety, housing violations, interstate and retail pricing of energy, immigration law, international trade, labor, mine safety, occupational safety, postal rates, securities violations, telecommunications licensing, unfair labor practices, Medicare, and Social Security old age and disability benefits.

Uniqueness of Federal ALJs

In recent years, there has been a proliferation of administrative adjudicators. However, ALJs remain the *only* administrative adjudicators who are appointed through a rigourous merit process and the *only* ones with stautorily-protected decisional

---

[6] Currently, the MSPB does not have an ALJ permanently assigned. Under OPM regulations, the National Labor Relations Board has loaned ALJs as needed to MSPB. 5 C.F.R. §930.208 (2007) Typically, the OPM ALJ loan program adjudicates several hundred cases annually at small agencies which cannot support a permanent ALJ assignment.

independence.[7] For example, unlike ALJs, so-called administrative judges and attorneys designated to hear non-APA matters are not exempt from performance appraisals, may be eligible for performance bonuses, and can be removed without a formal hearing before the MSPB.

The United States Supreme Court has recognized the unique status of ALJs under the APA. In *Butz v. Economou,* 438 U.S. 478 (1978), the Court affirmed the unique APA status of ALJs within the Executive Branch by stating that ALJs are comparable to federal judges for pay and compensation purposes. More recently, in *Federal Maritime Com'n v. South Carolina State Ports Authority*, 535 U.S. 743 (2002), the Court recognized that ALJs are the functional equivalent of other federal trial judges. Additonally, Congress recognized that the duties performed by ALJs are not analogous to the duties performed by other members of the Executive Branch workforce by creating a separate ALJ pay category in 1990. 5 U.S.C. §5372 (2007).

The Merit-Based ALJ Appointment Process

ALJs are the only Federal adjudicators who are appointed through a statutorily mandated merit-based process. 5 U.S.C. §3105 (2007). The APA-appointment process is administered by OPM.

Applicants must be attorneys with at least seven years of qualifying experience. In general, OPM conducts an examination of candidates for the position of ALJ and

---

[7] "ALJs do not in fact feel allegiance to the agency they work for and for all meaningful purposes are independent and neutral." William F. Funk, et. al., *Administrative Procedure and Practice* at 201 (1997).

compiles a register of eligibles which ranks and rates the candidates based upon their examination scores and which is consistent with veteran's preference requirements. When an agency requests a certification of applicants, OPM sends the agency a register certifying four applicants with the highest scores for each vacancy. The agency can appoint the applicant it chooses from that register, or, after exhausting the register, the agency can request that OPM certify another register.

In March 2007, OPM adopted revised ALJ regulations. 5 Fed. Reg. 72 (March 2007). The revised regulations omitted the long-standing detailed description in the prior regulation and the publication of OPM Announcement No. 318, which also delineated in detail the ALJ application and examination process. In addition, the revised regulations omitted the long-standing requirement for a written examination, typically an all-day process, and an oral examination before a panel consisting of a sitting ALJ, a representative of the American Bar Association, and an OPM representative.

The experience and qualifications requirements for the ALJ position are contained in a Qualification Standard that is published on OPM's website and the vacancy notice that was issued in connection with the current ALJ examination being conducted by OPM. OPM's elimination of the experience and qualifications requirements from the regulations and the establishment of a licensure requirement for sitting ALJs is the subject of a pending federal court appeal.[8]

---

[8] Case No. 07-0711 (RMC), *Association of Administrative Law Judges v. United States Office of Personnel Management* (D.D.C. June 14, 2007).

ALJ Compensation and Pay Compression

Under the APA, ALJs are classified as a separate civil service occupational group. 5 U.S.C. §5372(b) (2007).

ALJ statutory compensation has three elements--basic pay, locality pay, and the ability to obtain the same national pay raise that is authorized for the General Schedule.

Basic pay ranges between the statutory minimum of 65% of EL IV and 100% of EL IV. There are six levels of basic pay at AL-3, which includes most ALJs; a discrete level of basic pay at AL-1 for Chief Judges at major agencies, equivalent to 100% of EL IV; and a discrete level of basic pay at AL-2 for the remaining Chief Judges and Deputy Chief Judges. Prior to the last three years of pay compression, AL-2 Chief and Deputy Chief Judges pay typically approximates the 95% of EL IV percentage link that was eliminated by the 1999 amendment to the APA that is discussed below. *However, as also discussed below, due to pay compression all AL-1 and AL-2 Chief Judges and Deputy Chief Judges are pay compressed, i.e., are at the statutory EL IV ceiling and receive the same compensation.*

To afford a measure of pay equity with the General Schedule, in 1999 Congress eliminated the specific percentage links EL IV to ALJ basic pay. Prior to this law change, AL-2 Chief Judges and Deputy Chief Judges received base pay fixed at 95%of EL IV, and AL-3A through AL3-F receiving varying lesser percentages of EL IV. The amendment gave the President the authority to adjust ALJ salaries within a broadband maximum of 65% of EL IV, the minimum or entry-level salary for AL3-A, and a

9

maximum not to exceed EL IV.[9] The amendment also eliminated specific percentage links to EL IV basic pay which ranged from 95% of EL IV for AL-2 to 65% to 90% of EL IV for AL3-A through AL3-F and authorized OPM to prescribe the level in which each ALJ shall be placed and the qualifications for appointment to each level. 5 U.S.C. 5372 (C) (2) (A) (2007). The OPM regulations establishing the levels of pay for all levels of ALJ pay mirror the statute in providing that "The President determines the appropriate adjustment for each level of in the administrative law judge pay." 5 C.F.R.930.205(a) (2007).

- *Significant pay compression at AL-2, AL-3F, AL-3E, and AL-3D, however, has precluded the President from effecting a determination of the appropriate adjustment for each of these pay levels.*

- *Significant pay compression also has marginalized and precluded pay parity with the General Schedule. For ALJs to be placed in the same position as they were in 1991 vis-a-vis the General Schedule,[10] ALJs should be receiving basic pay in 2007 as follows:*

3A	=	106,274
3B	=	114,448
3C	=	122,626

[9] The 1999 amendment gave "the President the same authority to provide annual adjustments to [ALJs] that he now has with respect to the Senior Executive Service." H. Rep. 106-387, at p. 2 (1999).

[10] This parity gap does *not* reflect the effect of the recent incentive compensation authorized under the General Schedule for employees, including senior attorneys, at the Departments of Defense and Homeland Secuirty.

3D	=	130,793
3E	=	138,971
3F	=	147,149
2	=	155,023
1	=	163,494

Entry-level pay is at the statutory minimum level of AL-3A -- "the minimum rate may not be less than 120 percent of the rate for GS 15." (5 U.S.C. 5372(a) (1) (2007)) ALJs progress from AL-3A after 1 year intervals to AL3-B, AL-3C, and 3-D, and, then, after two year intervals, to AL 3-E and 3-F. 5 U.S.C. §5372(b) (3) (A) (2007).

Basic ALJ pay effective January 2007 is as follows:

AL-3/A	97100
AL-3/B	104400
AL-3/C	112000
AL-3/D	119400
AL-3/E	126900
AL-3/F	134200
AL-2	141900
AL-1	145400

ALJ Pay Compression

As noted, ALJ base pay *plus* locality pay rate is limited by statute to the rate for Level III of the Executive Schedule. *However, pay compression is deep and broad among the ALJ community:*

- *All AL-1 ALJs (Chief Judges at major agencies) are pay compressed and capped.*
- *All AL-2 (Deputy Chief Judges at major agencies and Chief Judges at smaller agencies) are pay compressed and capped.*
- *AL3-F ALJs in 24 of the 32 localities designated by the President's Pay Agent are pay compressed and capped.*
- *AL3-E judges in 4 of the 32 localities designated by the President's Pay Agent are pay compressed and capped.*
- *AL3-D judges in the San Jose/SanFrancisco/Oakland pay locality are pay compressed and capped.*
- *Many AL3-E and AL3-F judges are within $75-$3,400 of being pay compressed and capped.*
- *Approximately 60% of all ALJs are eligible for retirement and the vast majority of these ALJs have reached their effective pay cap at or near the top of the AL-3 schedule.*

Each year that Executive Level III pay does not advance at the same pace as that of the General Schedule, more ALJs judges become pay compressed or capped at the Executive Level III pay ceiling.

There is no distinction between the salaries of Chief Judges' pay at AL-1 and the salaries of Chief Judges and Deputy Chief Judges at AL-2 Chief Judges.

There is no distinction between the salaries of AL-2 Chief Judges and Deputy Chief Judges, on the one hand, and AL-3 line judges.

There is no distinction between the salaries of the most senior line judges at AL-3F and those of other line ALJs at AL3-D and AL3-E.

It is gainsaid, that to function well, the administrative judicial function must be staffed with an ALJ corps that is chosen from among the best legal minds that the federal government **and** the private bar have to offer. The federal government and the American people have a great stake in this process and in a competently staffed corps of ALJs.

Pay compression for ALJs is severe and threatens all agencies with recruitment concerns and potential mass retirement. Current and ongoing pay compression also will rob agencies of a well-managed transition from the current population of judicially experienced ALJs to a younger population of new ALJs which must be trained and integrated into their agencies as new positions become open.

Deep and spreading ALJ pay compression is unfair to those currently serving as ALJs. Moreover, each year it remains unchecked, pay compression negatively affects ALJ recruitment of the best candidates available. Current and ongoing pay compression will dilute the quality of applicants for ALJ positions, so that those eventually retained at lower relative pay levels may be unable to handle the complex and difficult cases which ALJs are currently entrusted to resolve.

In the circumstances, pay compression should be viewed as a contagion which if left unchecked could lead to the eventual demise of the ALJ program and a return to the era before 1946 in which many agency decisions often were marked by improper extraneous influences.

Diligence and excellence in the performance of judicial duties are crucial to the sound and efficient administration of APA adjudicatory proceedings. Compensation policies that result in pay compression conflate experience and militate against recruitment of the best and brightest judicial candidates and retention of senior experienced ALJs. In this respect, more than 60 percent of all ALJs meet or well exceed *minimum* retirement eligibility of 55 years of age and 30 years of federal service.

Legislative Proposal to Eliminate ALJ Pay Compression

As illustrated in the Appendix to my testimony, Congress is urged to eliminate ALJ pay compression by providing for streamlined enhanced compensation that will prove attractive to diverse well qualified senior attorneys in government, typically paid at GS-15-10, in the lower levels of the SES, **and** the private bar.

Our proposal provides for 3 levels of base pay:

- The ALJ base pay cap would become equivalent to 100% of EL II, currently $168,000.

- The ALJ 2 Base Pay cap would be at 95% of ELII, currently $159,000.

  The ALJ 3 Base Pay cap would be at 100% of EL III, currently $154,600.

AL3 would be streamlined and have four steps in lieu of the present six steps, consistent with the trend in other civil service pay to eliminate longevity steps.

- AL3-A entry level pay would be at 72% of EL III, currently $111,312.
- AL3-B would be at 80% of EL III, currently $139,140, after one year in AL3-A.
- AL3-C would be at 90% of EL III, currently 154,600, after 2 years in AL3-C.

Stated differently, it would require four years to reach the highest level in AL3 rather than the current seven years.

Additionally, under our proposal, base pay plus Locality Pay would be as follows:

- AL1 would be capped at 95% of EL I, currently $177,270.
- AL2 would be capped at 92% of EL I, currently $171,672.
- AL3 would be capped at 100% of EL II, currently $168,000.

These modest incremental adjustments to ALJ pay are designed to attract the best and the brightest qualified applicants to meet the serious national challenges mandated by the Congress and to retain experienced judges.

OPM's inappropriate insistence on an ALJ pay for performance structure

The ALJ community has had extensive meetings and discussions with OPM during the last three pay compressed years in an effort to obtain Administration support for the elimination of ALJ pay compression. OPM continues to insist upon and has conditioned possible support for the elimination of ALJ pay compression on a compensation structure that would be subject to unspecified "performance analogs" and

performance certifications. Performance conditions and performance evaluations are contrary to and inconsistent with the letter and the spirit of the APA. Any such pay for performance paradigm could directly and subtly interfere with the independent ALJ decision-making process that is the lynchpin of the APA and should not be sanctioned.

An ALJ decision in an on-the-record evidentiary hearing would be susceptible to political pressures or other outside influences if ALJ compensation is tied to ALJ performance. More than 60 years ago Congress recognized the need to exempt ALJ compensation from performance evaluations and long-standing regulations in furtherance of that wisdom bar ALJ incentive compensation, performance bonuses, and performance awards.

The public interest compels preservation of all of the decisional independence protections required by the APA, including prohibitions against performance-based compensation adjustments that could, in perception or reality, jeopardize ALJ decisional independence and fair and impartial agency decisions.

Conclusion

Simply put, ALJ basic pay is not high enough to attract the best and brightest attorneys in the private sector, most of whom receive pay far in excess of that paid to any government employee.[11] Moreover, ALJ basic pay is not high enough to recruit the best

[11] For example, departing law clerks at my agency, FERC, with two years of Federal service, have accepted offers from major law firms that provide for starting salaries of $140,000 to $160,000 **plus** a signing bonus of $50,000 **and** a commitment after their first three months to a base salary of $170,000. *Entry-level AL3-A Washington, D.C. locality pay of $115,151 stands in marked contrast and disparity.*

and the brightest senior government attorneys, i.e. those holding a rank of GS-15 or greater equivalent, all of whom receive a higher basic pay, without even considering their receipt of performance based bonuses.

Unless pay compression is addressed, ALJ pay will continue to decline, relative to historic comparisons, making this unique position that is central to administrative justice less and less attractive. Already, there is an ever widening gap between current ALJ pay and the pay of career agency staff officials who are responsible for selecting cases for ALJ assignment and reviewing their decisions. For example, the base pay of a GS-15 at step 10 is $120,981, whereas the starting base pay for an ALJ is $97,100. A similar gap exists between ALJ and SES positions and senior professional positions of comparable responsibility, and that gap continues to increase in light of compensation incentives available to many SES managers.[12] We cannot hope to attract the senior agency staff and SES attorneys who are the natural candidates for prospective ALJ positions as this pay inequity continues and the disparity increases. Nor can we hope to attract candidates from the pool of private practitioners who practice before our agencies. Entry level pay for ALJs is so low as to virtually assure that the ALJ program will be bottom feeding from the private bar, attracting only those whose practices are unsuccessful or worse.

---

[12] The minimum SES base salary for agencies with a certified SES Performance Appraisal System is $111,676, and the cap, exclusive of awards and benefits is $168,000. The current ALJ base pay range is $97,100 to $145,400 (locality pay not included). For a Washington, D.C. based ALJ, the salary range, including locality pay, is $115,151 to $154,600.

Our agencies and the American public deserve better. If they do not get high quality ALJs, the viability of administrative adjudication will be severely compromised. This is a very real concern. The Chairman of my agency expressed his dismay in 2001 over an inability to attract and retain the high quality of ALJs needed to handle FERC's challenging caseload. The situation today is far graver today than it was in 2001.

The need is great for recognition of the pay compression problem that exists in the ALJ program and for the development of a remedy. Reformation of the ALJ pay schedule to address the pay compression issue need not and should not be linked to the adoption of a pay for performance scheme that threatens to destroy the legitimacy of the administrative adjudication process conceived and enacted by Congress more than sixty years ago.

Appendix A

FEDERAL ADMINISTRATIVE LAW JUDGES
By Agency and Level
CHPE Status Report as of March 2007

AGENCY	AL-3	AL-2	AL-1	Total Number ALJs on Board
Commodity Futures Trading Commission	2	0	0	2
Department of Agriculture	2	2	0	4
Department of Education	1	0	0	1
Department of Health and Human Services/Departmental Appeals Board	7	0	0	7
Department of Health and Human Services/Food and Drug Administration	1	0	0	1
Department of Health and Human Services/Office of Medicare Hearings and Appeals	62	5	1	68
Department of Homeland Security/United States Coast Guard	4	0	1	5
Department of Housing and Urban Development	1	1	0	2
Department of the Interior	11	1	0	12
Department of Justice/Drug Enforcement Administration	2	0	0	2
Department of Justice/Executive Office for Immigration Review	1	0	0	1
Department of Labor	34	5	1	40
Department of Transportation/Office of the Secretary	2	1	0	3
Environmental Protection Agency	4	1	0	5
Federal Communications Commission	2	0	0	2
Federal Energy Regulatory Commission	14	1	1	16
Federal Labor Relations Authority	3	1	0	4
Federal Maritime Commission	1	0	0	1
Federal Mine Safety and Health Review Commission	8	1	0	9
Federal Trade Commission	0	1	0	1
International Trade Commission	4	0	0	4
Merit Systems Protection Board	0	0	0	0
National Labor Relations Board	39	4	1	44
National Transportation Safety Board	4	0	0	4
Occupational Safety and Health Review Commission	9	0	1	10
Office of Financial Institution Adjudication	1	0	0	1
Securities and Exchange Commission	3	1	0	4
Small Business Administration	1	0	0	1
Social Security Administration	1,106	8	1	1,115
United States Postal Service	1	0	0	1
TOTAL	1,330	33	7	1,370

Appendix B

ALJ Proposal to Eliminate Pay Compression

BASE PAY

ALJ 1 BASE PAY CAP	=	100% OF EL II (CURRENTLY $168,000)
ALJ 2 BASE PAY CAP	=	95% OF EL II (CURRENTLY $159,600)
ALJ 3 BASE PAY CAP	=	100% OF EL III (CURRENTLY $154,600)

AL3-A = 72% OF EL III (CURRENTLY $109,440)

AFTER 1 YEAR AS AN AL3-A

AL3-B = 80% OF EL III (CURRENTLY $123,680)

AFTER 1 YEAR AS AN AL3-B

AL3-C = 90% OF EL III (CURRENTLY $139,140)

AFTER 2 YEARS AS AN AL3-C

AL3-D = 100% OF EL III (CURRENTLY $154,600)

BASE PAY + LOCALITY PAY CAP

AL1 = 95% OF EL I (CURRENTLY $177,270)

AL2 = 92% OF EL I (CURRENTLY $171,672)

AL3 = 100% OF EL II (CURRENTLY $168,000)

Mr. DAVIS OF ILLINOIS. We are, indeed, fortunate that we have some distinguished witnesses here. Before I swear them in, I will just indicate who they are. Even though they have been sworn as Members of Congress, let me just indicate that our first panel is the Honorable Eni Faleomavaega, the Congressional Delegate representing American Samoa. Delegate Faleomavaega served as a staff counsel for the House Committee on Interior and Insular Affairs from 1975 to 1981, and as Deputy Attorney General for the Territory of American Samoa from 1981 to 1984. Mr. Faleomavaega was elected to the House of Representatives January 3, 1989.

The Honorable Patrick Kennedy is serving his seventh term in Congress as the Representative from the 1st District of Rhode Island. Representative Kennedy was appointed to the House Appropriations Committee in December 1998, but requested a leave of absence in order to fulfill a 2-year term as chairman of the Democratic Congressional Campaign Committee. Representative Kennedy now sits on the House Appropriations and Natural Resources Committee.

Gentlemen, we thank you so very much for your presence. We will begin with Delegate Faleomavaega. You may proceed.

STATEMENTS OF HON. ENI F.H. FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM AMERICAN SAMOA; AND HON. PATRICK J. KENNEDY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF RHODE ISLAND

STATEMENT OF HON. ENI F.H. FALEOMAVAEGA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, for giving me this opportunity to testify before you on an ongoing issue regarding COLA practices that discriminate against Federal employees in my District.

I am deeply concerned that Federal employees in my District do not receive the non-foreign-area cost of living allowance that the Office of Personnel Management provides in other non-foreign areas in which Federal employees are eligible to receive additional compensation.

As you know, Mr. Chairman, OPM is authorized to designate places in non-foreign areas eligible to receive additional compensation by virtue of costs of living that are substantially higher than in the Washington, DC, area. Federal statute provides authorization for COLA, and Executive Order 10,000 establishes two separate programs providing compensation in non-foreign areas, including COLA, based on higher costs and post-deferential pay as an incentive to work in non-foreign areas with extraordinarily different difficult living conditions.

Regulations governing administration of the COLA program are found in Title 5 of CFR Part 591.

Mr. Chairman, to determine eligibility for COLA and the rate of COLA payment, OPM conducts price surveys for comparison with prices in the base area of Washington, DC. Using these survey results, OPM has determined that Federal employees in all non-foreign areas except my District are eligible to receive COLA.

In response to a recent inquiry from my office seeking data to determine why Federal employees in my District do not receive

COLA, OPM staff explained that OPM has never conducted a survey in American Samoa. Since American Samoa clearly falls within OPM's definition of non-foreign area, it seems highly unreasonable that OPM asserts that the cost of living in my District is not high enough to justify payment of COLA. How in the world can you do this when no survey was ever done by OPM in my District? To me, that is ridiculous.

Although I have discussed these concerns with OPM officials, I have yet to receive an explanation that justifies withholding non-foreign COLA from American Samoa's Federal work force. Overall, my discussions with OPM have not proven fruitful. At this point I am looking to explore other options that could lead to a more fair and equitable treatment of the Federal employees in my District.

Given that American Samoa faces the same issues driving higher prices for goods, services, and travel that face all other insular areas in similar situations, it seems highly discriminatory that OPM chooses not to survey my District or provide COLA to Federal employees in my District.

The bottom line, Mr. Chairman, is that I just don't understand why OPM treats my little District in such a cavalier fashion, in my humble opinion. I don't even have COLA. My understanding is that now there is a new proposal coming out from the administration about having locality pay as another option that is possible for Federal employees to participate in.

I did introduce legislation to provide that COLA should be given to my Federal employees that work in American Samoa.

I sincerely hope, Mr. Chairman, that we will pursue this issue, and whatever proposed legislation that the administration has to offer and what we could do simply to correct this inequity that has existed for too long.

With that, Mr. Chairman, I will be happy to receive any questions. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much. We appreciate your testimony.

We will move to Mr. Kennedy.

STATEMENT OF HON. PATRICK J. KENNEDY

Mr. KENNEDY. Thank you, Mr. Chairman.

I appreciate the opportunity today to have a chance to testify on behalf of the critical issue of pay equity for our workers in the New England area. In particular, I also want to commend my colleague, Congressman Barney Frank, who has been a leader on this issue but who has been unable to join us due to other committee action in the Financial Services Committee, which he is at currently.

As Federal officials, both Congressman Frank and I are very familiar with the economy and job opportunities and the commuting patterns in our area. In fact, I have to drive through Congressman Frank's District to get back to home every evening from parts of my District, so we absolutely are in the same area, and so we share the same market in terms of our workers, and we also share the same economy as Boston in terms of the cost of living.

There is a very real case for treating our workers in the Massachusetts/Rhode Island area the same as the Boston area for the Federal wage area. In fact, it is already the case where white collar

Federal workers are at present treated as if they are working in the Boston areas for purposes of pay parity. The irony is that blue collar workers in the Federal civilian system are not paid according to the same pay parity system for cost of living.

That logic just doesn't wash, Mr. Chairman. I don't care how the Office of Personnel Management justifies it. If they have already determined that it is good enough for the white collar employees to be treated on pay parity for purposes of the market-based compensation and so forth to be paid the same because of the cost of living and the like, why are they not treating those at the lowest ends of the pay scale, the blue collar workers, the same? They are living in the same marketplace. In fact, the case should be made that they deserve to be compensated even more so on the same parity level as the Boston pay scale, which is higher, because, frankly, they are the ones who are on the lowest end of the scale and they have the toughest time making ends meet.

Frankly, we have a tough time filling these civilian slots, and this is, I think, a matter of great importance to us as people who are concerned about the strength of our civilian work force and the continuity of that work force and the longevity. I believe it is something that needs to be rectified, and that is the reason why I am here today to testify on behalf of these workers and say that it is just not justified that wage rates in Boston could be up to 33 percent higher than the ones in Rhode Island, and yet these workers in Rhode Island are essentially looking for homes and are paying for cost of living rates that are roughly the same as those that are working in and around Boston. It is just unjustified, and we need to get this remedied.

We have report language in the House Appropriations Committee to address this through the financial services and general Government appropriations bill, but the real solution lies with the Office of Personnel Management, and the decision to make this correction is now in their hands. This discrimination for blue collar workers needs to end, and it has been going on too long. I hope that we are finally making progress to have hourly workers who labor just as hard for less pay have their work redeemed and treated the same as those who are white collar workers whose work is acknowledged to be worthy of being paid on the same scale as their counterparts in the Boston area.

With that, I conclude my testimony and submit my fuller statement for the record. Thank you, Mr. Chairman.

[The prepared statement of Hon. Patrick J. Kennedy follows:]

Testimony of Congressman Patrick J. Kennedy
Hearing on Federal Pay policies and Administration
Subcommittee on Federal Workforce, Postal Service and the District of Columbia
July 31, 2007

Thank you Chairman for inviting me here today and for hosting a hearing on this critical issue. For those of us in the Narragansett Bay/ Rhode Island Wage Area, the issue of federal pay parity is a critical one. I appreciate the opportunity to testify along with my colleagues from Southern New England on this issue.

As federal elected officials from the Southern New England region who are very familiar with the economy, job opportunities and commuting patterns in the region, we believe there is no justification for the disparate treatment that is afforded to workers in our Congressional Districts. There is a very clear case for treating Rhode Island area prevailing rate workers (a group which includes workers in much of Southeastern Massachusetts) as being in the Boston area.

Rhode Island's federal agencies that are included in the Narragansett Bay Federal Wage Area (including Providence and Fall River) have consistently faced problems with employee recruitment and retention due to its proximity to the Boston wage area. Wage rates in the Boston area can be up to 33 percent higher. The average wage grade worker in Rhode Island earns $18.01 per hour compared to the same worker in Boston who earns $20.25 per hour. This same employee in Hartford, CT would also earn over $20.00 per hour.

It is no secret that nearly 80 percent of all Federal Wage System workers in the United States work either in the Department of Defense or the Department of Veterans Affairs. In Rhode Island, this often means that the employees at Naval Station Newport (where most of the nearly 500 federal wage workers in the Narragansett Bay Wage Area work) are underpaid. They are paid under one of the lowest Federal Wage System (FWS) regional pay scales in the nation while residing in one of the highest cost-of-living areas.

As the Committee may be aware, Congressman Frank and I have introduced legislation calling for prevailing rate federal employees in the Narragansett Bay/ Rhode Island Wage Area to be treated as if they worked in the Boston, Massachusetts Wage Area. We also have been working with the House Appropriations Committee to address this matter and there is language in the report accompanying the Fiscal Year 2008 Financial Services and General Government appropriations bill on this issue. But the real solution lies with OPM and the decision to make the correction is in their hands for now.It is time to end the discrimination that blue collar federal workers in this area have endured for too long. I'm confident we are finally making progress on behalf of hourly workers who labor just as hard for less pay.

I look forward to hearing more on this issue and finding the common ground that is out there on this issue to support our federal wage workers.

Mr. DAVIS OF ILLINOIS. Thank you, gentlemen, very much. I will begin with some questions.

I must confess that I find both sets of testimony to be quite intriguing, and it causes me some thoughts that I had not really spent a great deal of time pursuing.

Mr. Faleomavaega, how many Federal employees work in American Samoa, and how does this number compare with the number of Federal employees in the Commonwealth of the Northern Mariana Islands?

Mr. FALEOMAVAEGA. I don't know if there is a threshold that OPM determines to say, well, because of a certain number therefore we will look after you and check what the situation is. I don't want to mislead you, Mr. Chairman. I want to give you a more specific number. Also, when you say Federal employees, I have about 600 of my men and women who just came back from Iraq. I consider them as Federal employees and when they came to Hawaii they don't get a post differential and soldiers from Hawaii get that increase in their wages. A lot of these measurements that are taken are from some regulatory portions of the OPM regulations that say the cost of living or the standard of living may be the basis.

I don't want to render a guess here, Mr. Chairman, as to the exact number, but I will get that number and may it be made part of the record.

Mr. DAVIS OF ILLINOIS. All right.

Let me ask you how much does a gallon of milk, for example, cost?

Mr. FALEOMAVAEGA. Mr. Chairman, we don't drink that much milk. [Laughter.]

Maybe a loaf of bread might be better. It is very similar to the cost of bread in the State of Hawaii.

One of the things that I am always confronted with is that our friends at the OPM say the cost of living in your District is small. Well, how can they ever make such generalizations and statements when there has never been a survey done by OPM of the cost of living in my District? It just doesn't make sense.

Now, what they have done is they have taken the cost of living study out of the Territory of Guam and just simply tacked on the Northern Marianas as part of it, and yet they never conducted a survey for the Northern Marianas also. I find it highly questionable in terms of what procedures they follow. They treat two insular areas in one way and then treat my little insular area in a different way. I think that is unfair.

Mr. DAVIS OF ILLINOIS. Let's just say if I was to go to dinner at a moderate-priced food establishment and have myself a couple of those exotic drinks that probably exist. When I finished, what would my check likely be?

Mr. FALEOMAVAEGA. Mr. Chairman, I think maybe if I can respond to your question this way, all the insular areas have to import everything, from fuel to milk, if you will, the gas. So if I would just simply respond, it is similar to the State of Hawaii. They have to import practically everything. The State of Hawaii is one of the highest cost of living States, comparable or perhaps even higher than the Washington, DC, area.

Now compare that, the State of Hawaii, where we have to import just like Hawaii our goods. The gas now is $3-something a gallon. So I don't find it any different from any of the States, probably even higher than some of the States, simply because we have to import practically everything that we have. We don't have oil. We have a lot of fish, we have a lot of sharks, but we don't have oil.

Mr. DAVIS OF ILLINOIS. You don't eat the sharks, do you?

Mr. FALEOMAVAEGA. Yes, we do. Shark is delicious. In fact, shark fin is the highest-cost soup in Asia. It is about $100 for a little bowl of shark fin soup. By the way, we don't like killing sharks indiscriminately like that, cutting only the fins and then get rid of the carcass. We do have a Federal law that puts restrictions on that. But shark meat is good if you know how to prepare it.

Mr. DAVIS OF ILLINOIS. Well, thank you very much.

Let me ask you, Mr. Kennedy, do you know why the Federal Prevailing Rate Advisory Committee has not made a determination to calculate the pay of southeastern Massachusetts and Rhode Island with the prevailing rate?

Mr. KENNEDY. Well, I understand that there is a new director coming on, in fact, tomorrow. There has been a delay here and I think it is unfortunate that the delay has taken place, because we are talking about people's livelihoods, and as we spoke about today in the floor and yesterday with the Lenny Ledbetter case, time equals money. When you are delaying justice in terms of people's pay equity, every time that check is less than that is another unjust check and it is another sign of discrimination. So we need to get this rectified as soon as possible, and I hope that administratively with the new regional director coming onboard that will be expedited with their new leadership as soon as possible.

I might add that this means that within the blue collar wage scale the gap will be within the Boston market. It doesn't mean it is going to be within the same higher pay scale as the white collar; we are just asking for it to be on the same scale for that type of work that is now currently being performed.

Mr. DAVIS OF ILLINOIS. What is there that is unique about this area that may have caused this disparity to exist?

Mr. KENNEDY. I think probably the demand, perhaps. They could make the claim that there is a greater demand for the white collar workers, so they made the exception for the pay for white collar workers to accede into the Boston area pay scale as an incentive for them to bring in those white collar workers into a very needed area, which is the Navy Undersea Warfare Center's very important work in Rhode Island, for example. That could be the one explanation, and they could say, well, we needed to do that for the purposes of attracting people to these positions, whereas the need for us to attract people for the positions of these other civilian jobs is not of that critical a nature, and so we don't need to put them in the same category.

But the problem with that is you have already defied your own rule in terms of fairness. If you have given a break to one class of workers that you are paying one set of wages to in the same building, and yet the workers that are working hourly wages in that same work force that are working alongside those same workers

are now not treated equitably for purposes of that regional pay scale.

Mr. DAVIS OF ILLINOIS. Thank you, gentlemen, very much.

Let me ask Mr. Sarbanes if he has any questions.

Mr. SARBANES. Mr. Chairman, I don't really have any questions. I appreciate your holding the hearing. I do want to say that I have benefited, as you have, from getting a deeper understanding on these two issues which go to questions of within the pay structure whether there is the kind of parity and fairness there needs to be. I am interested in that, and equally interested in the question of how the overall pay structure for Federal employees compares to the work force at large, so I look forward to hearing the rest of the testimony.

Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. KENNEDY. Mr. Chairman, if I could just finally say, I mean, it would be one thing if I was here just saying that I would like to see my workers paid the same as the ones up in Boston, and I could make a strong case because the cost of living, we are all geographically so close, so the cost of everything doesn't vary greatly because it is the proximity of everything. The region is a high-cost region as it is. But really a salient point is the fact that there is already a double standard where they are already paying those same workers in my area that are white collar the prevailing, higher Boston wage rate, but they are not doing so for the hourly wage workers. That is what I think is the nub of the issue here.

Thank you.

Mr. DAVIS OF ILLINOIS. Thank you gentlemen very much.

Mr. FALEOMAVAEGA. Mr. Chairman, I was humoring my good friend from OPM here earlier before the hearing started, but, on a more serious strain, I sincerely hope that OPM will be more forthcoming and try to resolve this little problem that we have out there in the middle of the Pacific.

I don't think it is a complicated issue, but it just seems that when I request information or trying to find out how to go about doing things, they don't seem to care. That disturbs me.

So with that humor, Mr. Chairman, I want to thank you for allowing me to come.

Mr. DAVIS OF ILLINOIS. I thank the gentlemen very much. There may be some written questions that we may submit for you and ask you that you answer them.

With that, I would ask Ms. Springer to step forward. We are always pleased to have join us for these hearings and discussions. The Honorable Linda Springer, who is the eighth Director of the U.S. Office of Personnel Management. She was unanimously confirmed by the U.S. Senate in June 2005, and as the OPM Director Ms. Springer is responsible for the Federal Government's human resources planning, benefits program, services, and policies for the 1.8 million employee civilian work force worldwide.

Thank you so much, Ms. Springer. If you would, stand and raise your right hand. It is the custom of this subcommittee to swear in our witnesses.

[Witness sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that the witness answered in the affirmative.

Thank you so much. It is good to see you.

Ms. SPRINGER. Thank you, Mr. Chairman. It is good to see you, as well.

Mr. DAVIS OF ILLINOIS. And you may proceed.

STATEMENT OF LINDA SPRINGER, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, ACCOMPANIED BY NANCY KICHAK, ASSISTANT DIRECTOR, STRATEGIC HUMAN RESOURCE POLICY, OFFICE OF PERSONNEL MANAGEMENT

Ms. SPRINGER. Mr. Sarbanes, also thank you for your interest and for the opportunity to appear before you today to discuss the Federal Government's pay administration policies.

OPM does have responsibility for setting pay rates for the general schedule, which covers about 1.3 million employees. We also manage the Federal wage system, which covers about 200,000 employees, and the certification process for the Senior Executive Service performance-based pay system, which covers about 7,000 employees.

In addition, OPM administers special pay rates; regulates recruitment, retention, and relocation incentives; conducts and evaluates demonstration projects in alternative personnel systems. Our specific responsibilities in administering these systems and incentives is presented in my written statement. I would like to use the balance, though, of my opening statement time to discuss performance-based alternative pay systems and various legislative proposals that we have.

Alternative pay systems fall into three major categories: demonstration projects, independent systems, and Government-wide executive pay. These systems are characterized by such features as performance-based pay and broad pay bands.

OPM can establish and evaluate personnel motion projects to test changes in Government-wide human resources management systems. In excess of 50,000 employees are covered by alternate pay system demonstration projects. The Navy's China Lake demonstration project established in 1980 was the first of these and was made permanent in 1994. Since 1980, OPM has approved 17 additional demonstration projects. Four were completed, three were made permanent by separate legislation based on successful evaluation results, and the balance are currently active.

The second group of alternative pay systems are agency specific. These were established under independent authority granted by Congress. In several of these cases, agencies successfully argued that their recruiting and retention efforts would have been seriously impeded by continued coverage under the general schedule's outmoded system. Over 30,000 employees are covered by independent systems in place in such agencies as the FDIC, the IRS, FAA, Office of the Comptroller of the Currency, and others. This figure does not include employees covered by the newer NSPS and Homeland Security Department systems.

The third category, Government-wide executive pay, applies to the Senior Executive Service and the Senior Foreign Service, covering about 8,000 employees. These alternative pay systems have ex-

isted for as long as 25 years, and today cover over 90,000 Federal employees.

OPM has studied the experience under these systems and issued a comprehensive report in October 2005 at the request of Senators Collins and Voinovich, with our evaluation. The entire report is available at the OPM Web site, OPM.GOV, but I would highlight that in all these systems we have observed that performance, not time, drives pay; success depends on effective implementation; and employees have come to support those alternative pay systems.

As a result of these efforts, we have learned what works and what does not work when it comes to implementing successful performance-based pay systems. Challenges must be addressed, but done right. I emphasize that—done correctly. Better performers get higher pay. Agencies can better compete for and retain top talent. And the associated accountability structures support agency missions.

Mr. Chairman, I also want to bring to this committee's attention three legislative proposals related to pay. First is the Senior Professional Performance Act of 2007. This would increase the maximum rate of basic pay for certain senior level and senior technical positions to executive level three from the current limit of executive level four. It is similar to the SES system, and that proposal further provides that, in the case of an agency that has a certified performance application system, the maximum rate of basic pay for those positions could be as high as executive II, so very similar to the SES.

Our second proposal would provide that certification of an agency's Senior Executive Service performance application system would be in effect for a 24-month period, beginning on the date of certification, with the opportunity to extend it for 6 months. This remedies an unintended disadvantage in agencies where the system is certified near the end of a calendar year, so it is kind of a technical fix.

Mr. Chairman, we are pleased that both of these proposals were recently approved by the Senate Committee on Homeland Security and Governmental Affairs, and we are hopeful that both the Senate and House will be able to adopt them before the current session of Congress.

There is a third legislative initiative that I would like to comment briefly on, and that is that we have proposed legislation that would extend locality pay to non-foreign areas outside the contiguous 48 States. Currently, employees in some of these areas receive COLA adjustments, but, as we heard earlier, there are some exceptions. What this would do is to extend locality pay to all these areas, including American Samoa, so that would resolve the question that was raised earlier about them not having parity with other areas.

What we would do would be to phase that in over a 7-year period to mitigate any transition effects, but that would be the way we would propose addressing that problem.

This concludes my opening statement, Mr. Chairman, and I would be happy to answer any questions you or any other Members would have.

[The prepared statement of Ms. Springer follows:]

Statement of the Honorable
Linda M. Springer
Director
U.S. Office of Personnel Management

before the

Subcommittee on Federal Workforce, Postal Service,
and the District of Columbia

on

"Federal Pay Policies and Administration"

July 31, 2007

Good afternoon, Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the Federal Government's pay administration policies.

OPM's Role

OPM's role in setting Federal pay is predicated on the merit system principle – stipulated by Congress in the Civil Service Reform Act of 1978 – that equal pay should be provided for work of equal value, with appropriate consideration of rates paid by employers in the private sector, and with appropriate incentives and recognition provided for excellence in performance. In support of this principle, OPM has responsibility for the setting of pay rates for the General Schedule, which covers 1.3 million employees. We also manage the Federal Wage System, covering roughly 200,000 employees, and the certification process for the Senior Executive Service performance-based pay system covering 7,000 employees. In addition, OPM administers special pay rates; regulates recruitment, relocation, and retention incentives; and conducts and evaluates demonstration projects and alternative personnel systems.

General Schedule

The General Schedule is the primary Governmentwide pay system, covering professional, administrative, technical, and clerical occupations. Under the law, General Schedule pay is to be based on principles of equal pay for substantially equal work, and comparability with non-Federal pay rates.

The General Schedule consists of two pay components, a base General Schedule and 32 locality pay schedules covering the 48 contiguous states. Absent Congressional or Presidential action, OPM adjusts the base General Schedule each year, based on the

movement in the Employment Cost Index published by the Bureau of Labor Statistics (BLS). The geographic market-based pay component of the General Schedule is known as locality pay, which is adjusted based on BLS surveys in each of 32 defined locality pay areas. Locality pay was established by the Federal Employees Pay Comparability Act of 1990 (FEPCA) when it became apparent in the 1980's that Federal salaries were falling below those in the private sector, although the automatic statutory locality raises under FEPCA have never taken effect.

Federal Wage System

The Federal Wage System (FWS) covers trade, craft, and laboring occupations. It is the policy of Congress that FWS pay rates in a given local area be based on principles of equal pay for substantially equal work, relative differences in pay when there are substantial differences in work requirements, pay rate levels maintained in line with prevailing pay levels, and pay rate levels maintained so as to attract and retain a qualified workforce.

The pay rates for FWS occupations are determined by wage surveys in each of 132 appropriated fund local wage areas. A similar system covers nonappropriated fund positions. OPM's role is to manage the FWS. We prescribe policies and procedures for wage surveys to ensure uniform pay-setting for FWS occupations. We also support the Federal Prevailing Rate Advisory Committee, which makes recommendations with regard to the operation of the FWS.

SES Performance Appraisal Certification

OPM certifies, with Office of Management and Budget (OMB) concurrence, agency SES performance appraisal systems. Agencies with certified systems have higher pay ceilings and aggregate pay limitations than those with non-certified systems. OPM conducts a comprehensive review of certification packages supplied by agencies in support of their requests.

The certification process has been largely embraced by agencies, and the higher pay limit for certified agencies provides some relief with respect to the encroachment of the General Schedule on the SES pay range. This encroachment results from pay adjustments to the Executive Schedule, upon which pay rates for the SES are based, that are limited to the increase in the ECI component of the General Schedule pay adjustment.

Special Rates and Recruitment, Retention, and Relocation Incentives

OPM also plays a role in administering flexibilities with respect to pay.

OPM may establish higher rates of basic pay—special rates—for a group or category of General Schedule (GS) positions in one or more geographic areas to address existing or likely significant handicaps in recruiting or retaining well-qualified employees. OPM

may establish special rates for nearly any category of employee—i.e., by series, specialty, grade-level, and/or geographic area.

Agencies may request special rates at any time. In addition, OPM conducts an annual review of special rates each year and implements special rates adjustments in January to coincide with the across-the-board pay adjustments to the General Schedule.

Before locality pay was first implemented in 1994, special rate employees covered under title 5 authority made up approximately13 percent of the GS workforce. Today, special rate employees covered under title 5 authority make up approximately 4 percent of the GS workforce. In addition to higher locality pay rates surpassing many existing special rates over time, certain pay flexibilities, such as recruitment, retention, and relocation incentives, have provided agencies with more strategic and targeted alternatives to special rates.

These incentives, known collectively as the 3Rs, were further revised by Congress in the Federal Workforce Flexibility Act of 2004. They constitute important pay flexibilities that agencies use to attract, retain, and relocate individuals in the Federal service. The 3Rs are strategic tools agencies can use to address staffing problems in certain occupations and grade levels at specific work locations. OPM regulates the conditions under which the 3Rs can be used, but in most cases, agencies can implement or terminate the use of these incentives very quickly and without obtaining OPM approval.

Demonstration Projects

OPM can establish and evaluate personnel demonstration projects to test changes in Governmentwide human resources management systems. Navy's China Lake demonstration project, established in 1980, was the first of these. OPM has conducted numerous evaluations of its performance-base pay and pay band interventions. The China Lake demonstration project was made permanent in 1994.

Since 1980, OPM has approved 17 demonstration projects: 4 were completed, 3 were made permanent by separate legislation based on successful evaluation results, and the Commerce Demo, the DOD Acquisition Workforce Demo (AcqDemo) and the 8 DOD Lab Demos are currently active. Most of the demonstration projects have implemented performance-based, broadband pay systems, and OPM evaluations have concluded that these interventions have produced improvements to agency results-oriented performance culture and the ability to recruit and retain a high-quality workforce. OPM has also responded to Congress's request for evaluations such as the one by Senators Collins and Voinovich of other alternative personnel systems authorized by Congress during this decade (https://www.opm.gov/about_opm/reports/aps_10-2005.asp).

Legislative Proposals

The Administration has proposed legislation for senior-level and senior technical or professional (SL/ST) positions that would mirror SES certification provisions. The

Senior Professional Performance Act of 2007 would increase the maximum rate of basic pay for certain SL/ST positions to EX III from the current limit of EX IV. The proposal further provides that in the case of an agency that has a performance appraisal system that is certified by OPM as making meaningful distinctions based on relative performance, the maximum rate of basic pay for such positions will be EX II. Like the SES, SL/ST's would no longer be eligible for locality pay under the proposed legislation.

In addition, the Administration has also proposed legislation which would provide that certification of an agency's SES performance appraisal system would be in effect for up to 24 months, beginning on the date of certification, and could be extended for up to 6 months. Current law specifying that the certification is in effect for 2 calendar years has placed agencies at an unintended disadvantage when their appraisal systems are certified near the end of a calendar year.

Mr. Chairman, we are very pleased that both of these proposals I just referenced were recently approved by the Senate Committee on Homeland Security and Governmental Affairs as S. 1046, introduced by Senator George Voinovich. We are hopeful the Senate and House will adopt this bill before the end of this current session of Congress.

OPM has also proposed legislation that would extend locality pay to nonforeign areas outside the contiguous 48 states. Currently, employees in many of those areas receive Cost of Living Allowance (COLA) payments, rather than locality pay. The COLA program was implemented in 1948 and affects about 50,000 employees. COLA payments are based on the relative living costs between the COLA areas and Washington, DC. COLA payments are not subject to Federal income tax, but also do not count in the calculation of retirement annuities. The proposed legislation would gradually replace COLA with locality pay over seven years, to mitigate effects on the retirement systems and on agency budgets.

Mr. Chairman this statement outlines the many processes used to determine pay and the underlying policies that constitute the myriad Federal pay systems. I would be happy to answer any questions you or the other Subcommittee Members may have regarding my statement.

Mr. DAVIS OF ILLINOIS. Thank you very much for your testimony. Let me just ask, now that we have been joined by our ranking member, if he had any comments prior to the questioning.

Mr. MARCHANT. No, Mr. Chairman, I don't. I apologize. I had votes in another committee. Thank you.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Marchant.

Let me just ask Director Springer, in testimony that he submitted for the record, Representative Barney Frank notes that OPM took over a year to appoint a Chair to the Federal Prevailing Rate Advisory Council. Could you share with us why that may have taken such a long time?

Ms. SPRINGER. I can, Mr. Chairman. That position was previously paid as if it were a full-time commitment, a very significant salary. In fact, what I learned when I got to OPM was that the Chair position required no more than half of someone's time, and so I re-set the conditions there to be that we would hire someone and only pay them commensurate with the amount of time they would spend.

Now, the other condition on that position is that the incumbent cannot accept any other position, so you have a situation where someone is not able to get compensation from another position but can only, because this is a half-time position, receive half of a full salary. That is very difficult to find candidates that can work under those circumstances, so we started from the very beginning. When the previous Chair left we tried to find someone. We have someone who is very qualified. He has just recently retired from Federal service in many capacities, Peace Corps among them, and others, but who was looking for exactly that type of situation. But it is not easy to find when you have the constraint of not being able to supplement that position with another one. That is the reason why it took so long. I'm being very candid with you. It is not for lack of effort. But we do have a good candidate now. His first day is tomorrow.

Mr. DAVIS OF ILLINOIS. I guess it is not a problem now because you have found the ideal candidate. Do you think it might make any sense to change some part of it? I mean, can the person do what they need to do just on a part-time or half-time basis?

Ms. SPRINGER. I interviewed the previous Chair about that, because it wasn't a decision to make lightly, obviously. I wanted to make sure it wasn't a temporary change in workload or something like that, and they said no, consistently that 50 percent was the maximum. In some cases over the course of a year it was less than that.

They set their own agenda, and I don't set it for them. So it just depended on the agenda, but at most it was 50 percent. I didn't feel it was a good use of taxpayers' dollars to be paying a large annual salary to someone who only worked at most 50 percent of the time.

Mr. DAVIS OF ILLINOIS. Let me ask, do you think it is maybe something that we would want to take a look at?

Ms. SPRINGER. I am certainly happy to do that, but at this point the good news is that we do have a very qualified candidate who is very happy with those conditions.

Mr. DAVIS OF ILLINOIS. Could you explain to us how locality pay is calculated?

Ms. SPRINGER. I am going to probably ask for a little help from my associate director here on that, but clearly at this point there are different areas which, for the general schedule locality pay, that we look at, and look at the relative relationship to the District of Columbia as sort of a baseline, and then set the locality adjustment relative to that for, I believe, a comparable work force.

This is our associate director, Nancy Kichak.

There are 32 areas. We deal with Bureau of Labor Statistics data and we compare Federal pay to Federal pay. I don't know if there is anything else you would like for her to add to that might be helpful. She is the expert.

Mr. DAVIS OF ILLINOIS. You mentioned the District of Columbia. Is that sort of a starting place in any kind of way?

Ms. KICHAK. That is one area. District of Columbia is the locality base. Then we look at the rates in those areas.

Ms. SPRINGER. Right. We look at the rates in 32 areas, but the D.C. area is the base area.

Mr. DAVIS OF ILLINOIS. So if the cost of living is as high or higher than what it is in the District of Columbia, then that area would, in all likelihood, qualify for a pay differential?

Ms. SPRINGER. I believe that is correct, yes. It is wages, though. It is not cost of living; it is the actual wages that we are looking at.

Mr. DAVIS OF ILLINOIS. All right.

Well, let me go to Mr. Sarbanes and see if he has some questions.

Mr. SARBANES. Thank you, Mr. Chairman.

I was just curious. I am learning. I am in a heavy learning mode here, and I appreciate the hearing for that purpose, alone.

I was curious about the demonstration projects which you referred to, of which there have been a number, I guess, since 1980. Seventeen of them are mentioned in your testimony having been approved. I am just interested in how you determine. I guess my first question would be: what drives the kind of demonstration project that sort of bubbles up as something that ought to be done? What are the different factors that drive that? I imagine there would be concerns about competing for work force, about looming retirements and how to deal with them. I imagine it would also include responding to complaints or critique that get generated internally or externally. So my first question is: what are the factors that drive the impetus for these demonstration projects? And then the second is: what criteria do you use in approving them, deciding which ones should go forward?

Ms. SPRINGER. That is a good question, because we have had requests just recently—and I would say recently within the past year or so—for additional demonstration authority. There is a very long process, by the way. It is not as simple as an agency coming to OPM and saying, We don't feel we are competitive enough so we want to have authority to have an alternate pay system, and OPM just blesses it and they go on their way. There is a Federal Register notice process. There is a whole set of requirements that an agency is required to do, as well as giving public notice of how that system will work.

We have learned over the years what constitutes a sound alternative pay system, and we look for those things. Among them are good performance management structures and accountability structures, ways that feedback is given to employees, ways that the different pay bands are set up, manager requirements, training requirements. Have the managers been trained in how to function in this environment in a fair way for employees?

It is not something that happens lightly or quickly. There are limitations by Congress on the number of demonstration projects you can have, and I think that limitation is 10 at any given time, and the maximum number of people that could be in a demonstration project I believe is capped at 5,000, if I am not mistaken. And so Congress has given limited authority to agencies to step out in that area.

The reasons why they do it are ones that you mentioned. It often deals with competitiveness, it deals sometimes with the mission of an agency that is considered to be very important in the sense that they can't take the time it takes to go out and hire on a protracted basis. They want to be a very attractive employer in the talent market. And they want to retain those people, and they feel that to get the very best and the very brightest they need to have a more contemporary pay structure.

Mr. SARBANES. Thank you. I don't have any other questions.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Sarbanes.

Mr. Marchant.

Mr. MARCHANT. Ms. Springer, of the legislative proposals that OPM has submitted to Congress this year, which ones do you think are absolutely critical to be enacted?

Ms. SPRINGER. With respect to pay? These particular three? Well, I think they all are, actually, but of those three I think that the two of the three, the SES, the senior technical and the senior level employees, those executives, letting them have the opportunity to go to higher levels is important.

We need those people. We have a great dependency on them, their leadership, their experience, especially with the retirement wave. I have said this so many times, people think it is the only thing I focus on, but we have to keep them. We have it for senior executives who are managers. We need it for these senior leaders who are the professional, technical leaders, as well. I would say that is very important.

A close second would be moving from COLA to locality. If we don't do that, then we are going to have to come back on a case-by-case basis and try and deal with this COLA issue that was commented on earlier. But I would rather do it across the board.

That would be sort of my one and two.

Mr. MARCHANT. What sort of improvements in programs regarding Federal pay would you like to see implemented during the remainder of your term?

Ms. SPRINGER. I wish I had more time, to be honest with you, because I believe today that we have a patchwork system of pay in the Federal Government. We have systems that I have listed in my written statement. There are other systems that are smaller and less, maybe, widely known, but it creates internal inequities.

If I had all the time in the world, what I would do is step back and come up with a whole new system. But what I hope that we can do in this time is to just continue to raise awareness, pass these proposals, and raise awareness of the need for contemporary pay systems. We need to be competitive in the market for talent that everybody else is going after, and this is, in some cases, a competitive disadvantage in certain areas. Not all areas.

People often say, Well, how do you think we compare to the private sector? It really depends on the occupation, the geographic area, tenure, all those things.

I can find people who, in my own experience, are paid higher than what I know to be the case in the private sector, and others that are lower. But the fact of the matter is that we have an antiquated system that does not reflect performance. It pays for people to show up at work. I hope we will continue to get educated about that.

Mr. MARCHANT. Did you use any business models, large corporate business models? If you did, did you find any large corporation in America that operates under this kind of a system?

Ms. SPRINGER. I can't say that I have conducted or OPM has conducted an exhaustive study, but we certainly don't find it to be prevalent. I mean, I am not going to say there aren't some. I am sure there are some in certain areas. But in the companies that we have looked at, not exhaustively, but the ones that we have and that we are competing with for talent, we find that there is a performance element to pay, many times, to a much greater extent than what we have. All we are talking about is the increase in pay being a function to some degree of how well you did your job, not that your whole pay is at risk or half your pay is at risk the way it is found in the private sector.

Mr. MARCHANT. Thank you very much. Thank you for your visit to my office.

Ms. SPRINGER. Thank you.

Mr. MARCHANT. I appreciate it.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

Ms. Springer, I appreciate your coming before the committee and trying to help us with our work. I am a little bit flabbergasted about the delay on the chairman's position at the Federal Prevailing Rate Advisory Committee. I understand that it was vacant for almost 2 years. What I thought I heard you say was you had changed the position to a part-time position and also added a requirement that person do nothing else but that job.

Ms. SPRINGER. If I may?

Mr. LYNCH. Yes. Go ahead. I hope I am wrong. I hope that is not what I heard.

Ms. SPRINGER. The latter requirement that you said was not one that I set; that is a pre-existing requirement, that the individual in that position not hold another position. That is not my requirement. That had been there. That was in place.

Mr. LYNCH. OK. Not hold another position?

Ms. SPRINGER. Right.

Mr. LYNCH. OK.

Ms. SPRINGER. As far as the part-time, yes, what I did was to say that we will pay for the amount of essentially the time commitment of the individual, which was 50 percent or less. We are not going to pay someone—you can pick a figure. Let's say it is $140,000 for doing a half year's work. I don't think that would be what the taxpayers would expect us to do.

Mr. LYNCH. No, but I wouldn't expect there to be a job open for almost 2 years while we are waiting to fill it. That would give you a little indication about the desirability of that job.

Let me just say something else. There are five other members on this committee. What the heck were they doing while they had no chairman? I don't expect that there was very high productivity in the other five people.

Ms. SPRINGER. Well, if I may again——

Mr. LYNCH. Well, let me just tell you——

Ms. SPRINGER. We don't set the agenda for that.

Mr. LYNCH. Go ahead.

Ms. SPRINGER. They don't come under my control. They don't set the agenda. OPM does not set the agenda. They could meet whenever they wanted to, but I thought——

Mr. LYNCH. Without a chairman?

Ms. SPRINGER. I believe they can, but without having the chairman I think they were not able to——

Mr. LYNCH. I think they would be rudderless without a chairman. That is why you have a chairman.

Ms. SPRINGER. That is very possible.

Mr. LYNCH. OK. You know, this reminds me of a story one of my local mayors used to tell me. When we asked them how many people worked at City Hall, he said, about half of them. You know, this is the height of bureaucracy that this position remained open, vacant, because we or you, more specifically, made a part-time job out of this that we cant fill for 2 years.

Ms. SPRINGER. It was about a year and a half, by the way.

Mr. LYNCH. A year and a half.

Ms. SPRINGER. Yes. I am not saying that is good.

Mr. LYNCH. That is much too long, though. That is much too long. That is low. We got zero productivity out of that position for a year and a half, and now we think we have the perfect candidate.

Ms. SPRINGER. Yes.

Mr. LYNCH. After a year and a half. Any company in America that worked like that would go right out of business. You have to realize that. You see, that is not success. You think you saved something, but you left the job empty for a year and a half. We have to do better than that. That is unacceptable. OK? This is an important position. We should have figured out. There are 55,000 Federal employees. We should have been able to figure out some way to give that person something else to do. Give them a broom, give them a mop, give them something, but they should have been able to fill a full-time position and pay them a decent salary. It is not successful to leave the job open for a year and a half trying to find somebody willing to take the job, unless you want to leave the job open purposefully.

Ms. SPRINGER. Which is not the case.

Mr. LYNCH. Well, I hope it is not. It sure looks that way to me.

I yield back, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Lynch.

Let me just ask Ms. Springer, could you define pay compression for us?

Ms. SPRINGER. There are various places where pay compression manifests itself. I will give you one that is very noticeable. When the Senior Executive Service, which is tied to the Executive level salary levels, when those salary levels only increase, when they increase at a lower percentage rate than the rate the general schedule levels increase, then you have a problem where the level 15 in the general schedule, for example, starts to butt up against the lowest or the first level of senior executive pay.

What happens is that you have people in that general schedule level 15 who don't find it particularly attractive to move to the Senior Executive Service level.

Another one is where you have people who start to max out within the senior executive level so that you are unable to give them the type of performance-based pay increase that they have earned.

Those are two examples right there.

Mr. DAVIS OF ILLINOIS. There seems to be a great deal of discussion and conversation continuing about the effectiveness of pay for performance.

Ms. SPRINGER. Yes.

Mr. DAVIS OF ILLINOIS. Could you tell us your department's views on that? How do you think it is going?

Ms. SPRINGER. Yes, Mr. Chairman. We think that the place to look for where the ultimate success story would be or where to learn is from looking at these projects and systems covering 90,000 employees that have been in effect for a number of years, to look at their experience. That is why we did the study in late 2005.

Systems like this need to be around long enough to deal with the cultural issues, the training issues, the migration from an old system to a new system. It takes time. So to look at some of the more recent examples, the newer systems, and to pass judgment is really premature, so our agency—and I believe I can speak for the agency in this, because we published a report—would say that these systems over time are successful and meet their objectives. They have to be done properly, and there are instances where people rushed, went out too quickly, didn't do all their training or their homework. But done properly, as has been the case predominantly in this 90,000 employee group, we find, by and large, that they are successful.

Mr. DAVIS OF ILLINOIS. You did mention some concern about our pay system being somewhat patchy or a patchwork and in need of review, and certainly some further scrutiny. I guess I kind of took your thoughts on that to be similar to Representative Lynch's conversation with his mayor in terms of half the people down at City Hall working, and some of the individuals who show up for work but we don't have a good way of determining what they have done or how much they are doing or how they should be compensated.

Other than pay-for-performance, are there other thoughts and ideas that the department has as to what we look at as we go through some review?

Ms. SPRINGER. One of the things that they need to look at before they get to any type of a pay for performance type structure is to have the underpinning of a good performance management system. I don't care what type of pay structure you go to or compensation structure, you have to make sure the agencies' managers are trained in how to set goals with employees and that employees have their say in that, and that there are good performance management practices through the cycle, the performance year; that there are accountabilities; that things are measurable. All those things are rudimentary before you even move to a new pay system. That has been a focus of OPM in working with the agencies, even when they don't have an authority to move to a performance-based pay structure.

Some of the other things, though—and I will give you an example, Congressman—you can have two people, a senior executive who is in a performance-based pay system, and a GS–13 or –14, both working on the same project. They meet success. They achieve it beyond expectations. The senior executive will have that be a factor in getting an above-average adjustment to their pay. The general service person doesn't get that opportunity. They get the same as the person who didn't reach for that higher level of performance.

I don't think that is fair for the rank and file employees to not have the same up-side opportunity that the person in the Senior Executive has. The boss has the up-side opportunity, the rank and file person doesn't because they are stuck on this old one-size-fits-all system.

So I am not saying that there aren't many ways to do this, and we can look at it, but I think that to stay where we are in a 1950's vintage system that pays everybody the same, regardless, is just unfair.

People will say, well, you can give them a performance award or a special act award. A dollar of a special act award is not as valuable as a dollar of a salary increase. It is not there the next year in your starting opening salary. It doesn't count toward your pension. There are a lot of reasons why that special act or performance award does not have the same value proposition for an employee who has worked just as hard as the boss has, who has the up-side potential.

Mr. DAVIS OF ILLINOIS. Any my last question is: you did mention that over time pay for performance could prove itself, or you can make some determination. Do you have any notion of how much time a system would need to be in place before you could make a real determination about its effectiveness?

Ms. SPRINGER. I would like to get back to you on that, check our report, and look at those particular cases to see how long, but it is not 1 year. It is a few years, I think, before you really start to see that it takes hold.

Mr. DAVIS OF ILLINOIS. Thank you very much.

Either one of you gentlemen have any further questions?

[No response.]

Mr. DAVIS OF ILLINOIS. Thank you very much. We appreciate your being here and appreciate your testimony.

Ms. SPRINGER. Thank you, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. And we will go to our next panel. While they are coming, I will introduce them.

Our third panel is Ms. Colleen Kelley. She is the president of the National Treasury Employee Union, the Nation's largest independent Federal sector union, representing employees in 31 different Government agencies. As the union's top elected official, she leads NTEU's efforts to achieve the dignity and respect Federal employees deserve. Ms. Kelley represents the NTEU before Federal agencies, in the media, and testifies before Congress on issues of importance to the NTEU members and Federal employees. Welcome.

Mr. J. David Cox is the National secretary-treasurer of the American Federation of Government Employees, the Nation's largest union representing Federal and District of Columbia government employees. He was elected during the union's 37th convention in August 2006. Welcome, Mr. Cox.

And Mr. Curtis Copeland is currently a Specialist in American Government at the Congressional Research Service [CRS], within the U.S. Library of Congress in Washington, DC. His specific area of research expertise is Federal rulemaking and regulatory policy.

If you all would stand and raise your right hand to be sworn in.

[Witnesses sworn.]

Mr. DAVIS OF ILLINOIS. The record will show that each of the witnesses answered in the affirmative.

We thank you all again for coming, for being with us. Ms. Kelley, we will begin with you.

STATEMENTS OF COLLEEN KELLEY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEE UNION; J. DAVID COX, NATIONAL SECRETARY-TREASURER, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; AND CURTIS COPELAND, CONGRESSIONAL RESEARCH SERVICE

STATEMENT OF COLLEEN KELLEY

Ms. KELLEY. Thank you very much, Chairman Davis, Ranking Member Marchant, Mr. Lynch. I appreciate the opportunity to be here today to talk about this important matter.

First, much has been made about a recent study by the Partnership for Public Service suggesting that the general schedule system of pay should be immediately dismantled. Despite the press attention, I believe it is important to point out that the study surveyed 55 human capital officers, mostly political appointees, with five questions. A minority of them recommended immediately scrapping the GS system, which covers 1.3 million Federal employees. No hard data was unearthed to support the recommendations that the GS pay system needs replaced by what they call a market- and performance-sensitive pay system.

In fact, the GS is market based. It has the goal of achieving comparability with the private sector through the 32 different locality pay areas that were talked about, and employees received pay raises based on merit, which in my mind is synonymous with performance. It is a structured system, and yet managers currently have trouble implementing it. It does not make sense to me that a more subjective system will solve anything.

In fact, the alternative pay experiments being promoted to replace the GS system have been dismal failures. For example, the IRS pay banding compensation system for managers is clearly not working, and I would recommend that this subcommittee take a close look at that.

Just this month on July 3, 2007, the Treasury Inspector General for Tax Administration released a report that he titled, "The Internal Revenue Pay for Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders." Most alarming was the finding that the IRS, according to TIGTA, has, "Risked its ability to provide quality service to taxpayers, because the system hindered the agency's ability to recruit and keep skilled leaders."

NTEU strongly believes that in the absence of a statutorily defined pay system like the GS system that pay should be the subject of collective bargaining, as it is in the private sector. At the FDIC, NTEU bargains today for pay on behalf of its employees, and there are still problems at the FDIC. The FDIC divorced its pay system from its performance management system and it established a separate set of what they call corporate contribution factors to determine employee annual pay increases. With the heavy reliance on these vague and subjective corporate contribution factors, employees do not clearly understand what they must do to be evaluated at the highest level, and the forced ranking system prevents them from ever knowing how this might translate into a pay increase, so the pay system does little to actually motivate performance.

In TSA, due to the lack of collective bargaining rights, serious problems abound at that agency with the transportation security officers' new PASS system. Allegations of favoritism and cronyism surround the system, and no meaningful employee appeals process exists.

At the Department of Homeland Security, while the pay for performance system has not yet been implemented, we are very concerned that it will push employees who are already demoralized out of the agency, when the importance of keeping experienced, skilled employees is greater than ever.

The proposed system is not set by statute, nor is it subject to collective bargaining. It will have employees competing against each other and discourage teamwork. It is subjective and enormously complex.

Before Congress considers any further limitations of the GS system, it should require OPM to promote existing flexibilities and authorities that could help agencies recruit and maintain talented Federal employees. These range from cash awards to individuals and groups to quality step increases, retention allowances, student loan repayments, foreign language awards, travel incentives, referral bonuses, and many others.

Federal employees deserve what every other employee deserves: a system that offers fair compensation for a fair day of quality work.

When the administration proposed its fiscal year 2008 budget with a 3 percent pay raise, I spoke out in opposition and called for a minimum 3.5 increase. That level continues the tradition of providing Federal employees and military personnel a pay increase

based on the employment cost index plus one-half of a percent. It also begins to close the 13 percent pay gap between civil servants and the private sector. If we are serious about addressing the needs of the Federal work force, fair and adequate pay is the first place to start.

Fortunately, Congress is moving legislation with this pay level and NTEU will not rest until both military and civilian employees receive their fair raise.

In conclusion, there is no hard evidence that the current pay system for Federal employees needs to be changed. The current experiments with alternative pay systems are failing, and the Government should use the flexibilities it currently has before moving to new pay system experiments.

I thank you again for the opportunity to testify today and will be happy to answer any questions you have.

[The prepared statement of Ms. Kelley follows:]

Testimony of

Colleen M. Kelley

National President

National Treasury Employees Union

Subcommittee on Federal Workforce, Postal Service and
the District of Columbia

Oversight and Government Reform Committee
House of Representatives

on

Federal Pay Policies and Administration

July 31, 2007

1750 H Street, N.W. • Washington, D.C. 20006 • (202) 572-5500

Chairman Davis, Ranking Member Marchant, and members of the Subcommittee, I appreciate the opportunity to appear again before this distinguished subcommittee to discuss the important subject of federal pay systems. As you know, the National Treasury Employees Union represents more than 150,000 federal employees in over 30 different agencies and departments throughout the government.

The subcommittee should be commended for investigating this important subject. The subject of pay is close to every employee's heart, not just those who work in government. A fair and just wage has really been at the core of labor management relations for decades. Whether you work in the public or private sector, the concept of a fair day's pay for a fair day's work is a basic tenet in employee/employer relationships. Federal employees want what every other employee wants, a system that offers fair compensation for a fair day of quality work.

The General Schedule system, or GS system of pay as it is commonly known, is essentially a market based system that utilizes merit based increases. It is the system through which hundreds of thousands of dedicated federal employees meet their responsibility to serving the public every day. Recently, your subcommittee heard from Professor Charles Fay of Rutgers University, an expert in the compensation field who describes compensation as an art, not a science. In discussing market pricing for the government he said the Bureau of Labor Statistics "uses impeccable methodology in gathering reliable and valid data to price the GS, and applies sophisticated statistical methods to evaluate survey data and to apply it to the GS for the Federal Salary Council." *(May 22, 2007 testimony)* The same cannot unfortunately be said of the many compensation experiments currently going on in government.

Recently the Partnership for Public Service publicized a report finding that one-third of the 55 Chief Human Capitol Officers (CHCOs) in government supported scrapping the GS system immediately. I would point out that one-third of the 55 people polled is a minority and my guess is that most of the CHCOs are covered by the SES pay schedule, not the General Schedule. Yet this very small group of 18 believe a government - wide compensation system covering 1.2 million dedicated public servants should be scrapped. I strongly disagree with that and hope my testimony will refute some of the misinformation being circulated about the government's GS pay system.

Federal employees help keep our government systems running, protect our health, and safety including the food supply; support our states and cities; administer benefits like social security; and, along with our brothers and sisters in the military, protect our homeland and defend our borders.

Unfortunately, the current Administration has taken steps to dismantle the current GS system and replace it with various pay for performance management systems. But there is no hard evidence that these alternative systems work. To the contrary, there is some evidence that they do *not* work.

Federal Pay Update

Before I discuss the subject of alternative pay systems, however, I would like to provide an update on the federal pay raise. As many of you may know, I was an early opponent of the Administration's proposal to raise federal pay by just 3 percent. Last year federal employees and military personnel suffered one of the lowest pay raises in decades. The Administration-backed 2.2 percent increase amounted to the lowest raise in almost twenty years for federal employees, hurting morale and keeping federal workforce salaries well behind the private sector. Most federal employees actually received only a 1.8 percent raise when taking into account locality pay. This did little to reduce the 13 percent pay gap between private sector and public sector pay, the stated goal of the 1990 Federal Employees Pay Comparability Act (FEPCA).

When the Administration proposed its Fiscal Year 2008 budget of 3 percent, I spoke out in opposition and called for a minimum 3.5 percent increase. I believed then, and I still believe today, that if we are serious about addressing the federal workforce, fair and adequate pay is the first place to start. Federal civil servants and the military deserve at least another half percent above the recommended level to bring the average pay raise to 3.5 percent. Not only would this level make a dent in the 13 percent pay gap, but it would continue the precedent of enacting a raise based on the Employment Cost Index (ECI) plus ½ percent. The ECI plus ½ percent standard has been followed in every year of the current Administration until 2007.

Fortunately, with the support of many members of this subcommittee, on June 28, 2007, the House passed the Financial Services and General Government Appropriations Act for FY 2008 which included the 3.5 percent raise. The Senate Appropriations Committee reported 3.5 percent in its bill on July 12th. Similarly, the Defense authorization and appropriations measures contain a 3.5 percent basic pay raise for military personnel. These legislative measures are moving through Congress and NTEU will continue to push for their enactment. In the interests of parity, comparability with the private sector, closing the pay gap and basic fairness, we will continue our advocacy until this level becomes law.

Alternative Pay Systems

There has been a great deal of discussion about alternative pay systems, including so-called pay for performance systems. The Administration has begun implementing alternative pay systems at federal agencies. While NTEU stands ready to contribute to measures leading to a more effective and efficient federal government, my concern is that the Administration has moved forward on pay alternatives without first demonstrating that a problem exists. It has not brought forth the kind of comprehensive impartial data-based research explaining why it finds the GS system inadequate. Nor has it required agencies to use the many authorities and flexibilities already available to them to offer alternative pay and benefits. I will discuss these flexibilities later in my testimony.

However, first I would like to comment specifically about several alternative pay systems that NTEU has been involved with, including the Federal Deposit Insurance Corporation (FDIC) system, which has been in effect for several years, the Department of Homeland Security (DHS) system, which is still in the planning and implementation stage, the IRS system that currently

covers only managers, and the Transportation Security Administration's (TSA) problematic PASS system.

Let me point out that alternative pay and personnel systems have a very small, if not negligible, impact on recruiting, retaining and maximizing the performance of federal employees. To quote Robert Behn, author and lecturer at Harvard University's John F. Kennedy School of Government, "Systems don't improve performance; leaders do." In his book, *The Human Equation: Building Profits by Putting People First,* Jeffrey Pfeffer, of Harvard Business School says, "Although variable pay systems that attempt to differentially reward individuals are clearly currently on the increase, such systems are frequently fraught with problems. Incentives that reward groups of employees or even the entire organization...are customarily preferable." (p.203)

I believe leadership that solicits, values and acts on the ideas of frontline employees in efforts to achieve agency missions is missing in many agencies today. Providing that kind of leadership would do more to improve the quality of applicants and performance of employees than alternative personnel systems and so-called pay for performance projects as proposed by this Administration. Let me bring to the subcommittee's attention the following examples of alternative compensation systems which are all problematic.

FDIC

NTEU is the union for bargaining unit employees at the FDIC. We have bargained over compensation there since *1993.* While we have serious concerns about the current state of the pay system at the FDIC, we strongly believe that in the absence of a statutorily defined pay system, like the GS system, pay should be subject to collective bargaining, as it is in the private sector. Especially in a government environment, employees and the public need a credible means of ensuring that pay is set objectively. That can be by statute, as the GS system, or by collective bargaining, but without one of these approaches, the system will lack credibility and be open to charges of subjectivity and favoritism. I believe FDIC management agrees that bargaining over compensation has been positive for the organization.

I believe that NTEU and FDIC management also agree that you have to have the money to reward good performance. As you know, guaranteeing that the money will be there to fund additional pay in a system reliant on Congressional appropriations is virtually impossible. It is only slightly more possible in a government corporation like FDIC, that is funded by fees.

A key area, however, in which NTEU is at odds with FDIC is the current system to determine performance-based pay. Several years ago, the FDIC divorced its pay system from its performance management system, and established a separate set of "corporate contribution" factors to determine employee annual pay increases. Although multi-level performance scores have recently been reintroduced as a factor in pay determinations, pay increases are still based primarily on the "corporate contribution" criteria, which are highly subjective, and not grade or job-specific. Furthermore, although pay increases are purportedly based on merit, the FDIC uses a forced distribution system in determining employee pay increases: employees in each

organizational component must be "ranked," and the top level pay increases are limited to the top 25% of employees.

This system of forced rankings and pay distributions has demoralized and angered FDIC employees. Our members report that the system is divisive and discourages teamwork. It is discouraging employees from taking risks, and sends the message that three quarters of them cannot ever be considered to be top performers, regardless of how well they perform. The forced ranking system, under which employees from different work units with different supervisors must be ranked against one another, smacks of a "star chamber" approach to pay-for-performance.

With the heavy reliance on vague and subjective "corporate contribution" factors, employees do not clearly understand what they must do to be evaluated at the highest level, and the forced ranking system prevents them from ever knowing how this might translate into a pay increase, so that the pay system does little to actually motivate performance. The current system therefore lacks transparency and credibility, and has caused employees to question its fairness. Hundreds of individual grievances have been filed alleging unfair pay determinations, as well as mass grievances alleging discriminatory impact based on age and race. A previous system used by the FDIC, in which pay increases were tied directly to the results under multi-level performance evaluations, without arbitrary limits on the number of employees who could receive performance-based pay at each level, had credibility with employees. The current system does not.

IRS

The Internal Revenue Service (IRS) has a pay banding performance based compensation system. While bargaining unit employees represented by NTEU are not covered by this alternative system, managers participate in it. I would like to comment briefly on this pay system and its shortcomings.

Just this month, on July 3, 2007, the Treasury Inspector General for Tax Administration (TIGTA) released a report (2007-10-106) titled, *"The Internal Revenue Pay-for-Performance System May Not Support Initiatives to Recruit, Retain, and Motivate Future Leaders."* The TIGTA report found a number of serious deficiencies in the pay for performance system at the IRS. Most alarming to me, Mr. Chairman, was the sentence on page 1 of the report under "Impact on the Taxpayer" and I quote:

> "In addition, the new System was not adequately communicated to the managers before it was implemented, causing opposition and decreasing morale. As a result, the IRS risks reducing its ability *to provide quality service to taxpayers* because the Internal Revenue Pay-for-Performance System potentially hinders the IRS' ability to recruit, retain, and motivate highly skilled leaders." *(emphasis added)*

I believe we cannot ignore the bottom line mission of the agency in these pay experiments. If these alternative pay systems are jeopardizing the achievement of an agency's

core mission – in this case to provide quality service to taxpayers—how can we justify more experiments with these systems that have questionable successes?

In its report, TIGTA found: 1) the system discouraged both managers and non-managers from applying for managerial positions; 2) performance based pay increases were not necessarily commensurate with a manager's performance; and 3) the Human Capital Office (HCO) did not adequately communicate with affected managers, which increased opposition and decreased morale. I need not remind you, Mr. Chairman, that the point of this pay experiment was to attract quality talent to offset an expected dearth of government managers when nearly 90 percent of high level government managers will become eligible to retire in the near future. These dismal findings hardly confirm the predictions of success.

Shortly after this report was issued we understand the Federal Managers Association (FMA) revealed its own misgivings about the direction of the system in its newsletter to FMA members. Most revealing was its internal survey which showed that 92 percent of respondents answered "no" when asked if the current performance management system accurately identifies the truly 'outstanding' managers. *(FMA newsletter 2007-11, July 10, 2007)* Further, FMA agreed with TITGA that communication with employees needs to be more "open and timely" with respect to pay before changes to pay and benefits can be made.

Results shown by TIGTA and FMA demonstrate to me that not much was learned since 2004 when the Hay Group did a Senior Management Pay band (SMPB) Evaluation on this system for the IRS. (June 25, 2004) At that time the results showed: 1) 76% of covered employees felt the system had a negative or no impact on their motivation to perform their best; 2) 63% said it had a negative or no impact on the overall performance of senior managers; 3) "Only one in four senior managers agree that the SMPB is a fair system for rewarding job performance or that ratings are handled fairly under the system;" 4) "Increased organizational performance is not attributed to the SMPB."

The results of this system are dismal, yet it is showcased as a model for moving the whole federal government to a similar system. In fact, there is a dearth of information to indicate that alternative pay systems have had any significant impact on recruitment, retention or performance. A GAO report on "Human Capital, Implementing Pay for Performance at Selected Personnel Demonstration Projects" from January 2004 (GAO-04-291) included virtually no evidence that the systems improved any of those measures. In fact, the Civilian Acquisition Personnel Demonstration Project, reviewed in that report, had as one of its main purposes, to "attract, motivate, and retain a high-quality acquisition workforce." Yet, attrition rates increased across the board under the pilot.

DHS

Despite being ranked at the bottom of the Partnership for Public Service's annual survey of "Best Government Places to Work," DHS is insistent on moving forward with an alternative personnel and pay system. While the pay for performance system at DHS has not yet been implemented, we are very concerned that it will push employees who are already demoralized out of the agency when the importance of keeping experienced, skilled

employees is greater than ever. Let me be clear, the employee opposition to the proposed DHS system is not about "fear of change," as some have tried to portray it. I know firsthand that this group of employees, entrusted with protecting our country from terrorists and other criminals, is not a fearful group. What they most object to about the proposed DHS system is that it will make it harder, not easier, to accomplish the critical mission of the agency.

There are several reasons for this: 1) The system is not set by statute or subject to collective bargaining, so there is nothing to provide it credibility among employees; 2) The system will have employees competing against each other over small amounts of money, discouraging teamwork, which is critically important in law enforcement; 3) The system is subjective, which will lead to at least the appearance of favoritism; 4) The system is enormously complex, the administration of which will require huge amounts of money that is so much more desperately needed in frontline functions, not to mention siphoning off money that could go for more pay in a less administratively burdensome system; 5) the draft competencies for the new DHS system do not recognize or reward the real work that these employees do to keep our country safe.

And while I am on the subject of DHS, I want to divert for a moment on the first point I raised, the issue of collective bargaining. This is a timely subject as your subcommittee knows. The courts have thrown out DHS regulations that relied on provisions in the Homeland Security Act of 2002 (HSA) allowing limits on collective bargaining. Similar DHS efforts to promulgate regulations based on the HSA that would make the pay system less fair and objective and more open to abuse have faltered, but are continuing. NTEU believes these provisions of the HSA should be repealed as provided in H.R. 1684, the Department of Homeland Security Authorization Act that passed the House on May 9, 2007. In addition, screeners in the Transportation Security Administration should be afforded the same collective bargaining rights as other DHS employees as provided for in the original House-passed 9/11 Commission bill. I have called for this and will continue to fight for those rights.

Finally, I would be remiss if I did not mention the new alternative pay system for Transportation Security Officers (TSOs) at the Transportation Security Administration (TSA) called the Performance Accountability and Standards System (PASS). This misguided plan was unveiled in 2006 and is already in disarray.

TSA's PASS system is one of the largest concerns for TSA employees. At JFK International Airport, for example, employees are rated at four levels ranging from "role model" to "did not meet expectations." Employees are eligible for merit raises if they attained ratings at the two highest levels. We understand that only a handful of TSOs at JFK received ratings at the highest level rating and possibly only 20% of the total number received ratings enabling them to qualify for a merit raise in their base pay. Allegations of favoritism and cronyism surround the system because there is no meaningful way for employees to challenge their ratings. Without collective bargaining rights, employees fear retribution if they speak up.

TSA has one of the highest voluntary attrition rates in the entire federal government and in my mind systems like PASS contribute to this. In a recent Government Accountability Office (GAO-07-299) report on airport security, GAO attributed a high attrition rate at TSA to include,

"limited advancement opportunities, need for a higher paying job, work hours, difficulty of work and job satisfaction." *(p.48)*

Mr. Chairman, let me be clear. NTEU is not averse to change. We have welcomed, including at the FDIC where we have bargaining unit employees, and elsewhere, the opportunity to try new ways of doing things. Based on my experience, these are the things I believe will have the most impact on the quality of applicants and the motivation, performance, loyalty and success of federal workers.

1) Leadership. Rules and systems don't motivate people. Leaders do.

2) Opportunities for employees to have input into decisions that affect them and the functioning of their agencies. They have good ideas that management is currently ignoring.

3) A fair compensation system that has credibility among employees, promotes teamwork and is not administratively burdensome.

Unfortunately, I do not believe the experiments in alternative pay systems like these I have discussed can be any sort of model for positive change. It is a mystery to me where the evidence is that these systems have produced successes to justify putting them in place throughout the federal government. While I know the Partnership for Public Service's limited survey points to a small sample of those calling for the demise of the GS system, I fail to see any credible comprehensive studies that demonstrate an empirical body of evidence to support a sweeping change of this magnitude.

OPM and Flexibilities

Mr. Chairman, the subcommittee has pointed out -- and we have all read in the media -- that a surge in federal retirements could occur in the next several years. The Council for Excellence in Government & Gallup Organization recently reported that 60 percent of the federal government's General Schedule employees and 90 percent of the Senior Executive Service will be eligible to retire in the next ten years. (*Within Reach . . . But Out of Synch: The Possibilities and Challenges of Shaping Tomorrow's Government Workforce,"* December, 5, 2006).

While no one knows for sure whether all of those eligible to retire will actually do so, I do know that the federal government had better be prepared to compete for the best and brightest of the young new workers. Just as importantly, however, it must be prepared to use its many existing authorities and flexibilities to *retain* the hundreds of thousands of talented public servants who have the knowledge and expertise to continue contributing to the federal workforce. The failure to pay competitive salaries, the constant focus on downsizing and outsourcing and the bashing of federal bureaucrats have put the federal government at a disadvantage when it comes not only to hiring the best new college graduates, but also to retaining its current employees.

Unfortunately, many federal agencies have been lax in utilizing their existing authorities and administrative personnel rules to retain the thousands of dedicated public servants who are

currently working in our federal agencies. I contend that we should not plunge forward with untested pay experiments until we require OPM and the agencies to use existing flexibilities.

During the debate over the Bush Administration's ill-conceived proposal to change the GS pay system, I pointed out that there are a host of provisions on the books that allow the federal government to reward high performers, including recruitment and retention bonuses, quality step increases and paid time off awards. These options are often not used because agencies are not given the resources to fund them, or agencies find it cumbersome to ask OPM for authorization.

But before we spend more taxpayers' money designing entirely new compensation systems, the Office of Personnel Management (OPM) must do more to make sure agencies are aware of these existing provisions and are given the necessary tools to use them to their maximum capacity.

The Office of Personnel Management (OPM) issues a manual of authorities and flexibilities that is currently available to the different federal agencies under Title V of the US Code, entitled *Human Resources Flexibilities and Authorities in the Federal Government.* It essentially contains a list of flexibilities and authorities under which federal agencies can make personnel accommodations to attract candidates to the federal government or to offer incentives for federal employees to remain in their government jobs.

The Government Accountability Office (GAO) has undertaken a number of studies focusing on the importance of designing and using human capital flexibilities. In one report (GAO-03-02), the GAO found that the flexibilities that are most effective in managing the federal workforce are those such as time off awards and flexible work schedules. In other words, flexibilities are in place for employees and agencies to agree upon set times off to better balance the demands of career and family life.

Unfortunately, OPM has not focused extensively on advertising existing authorities and flexibilities. OPM states in the Preface of its handbook, "We serve as a resource for you as you use existing HR flexibilities to strategically align human resources management systems with your mission." *(p.i)* yet, most federal agencies do not take advantage of them. Agencies can offer numerous awards as incentives to employees. These range from things like cash awards to individuals and groups; to quality step increases; to retention allowances; to foreign language awards; to travel incentives; to referral bonuses and others. Before Congress moves to pass new laws, it should require OPM to promote existing authorities, and aggressively require federal agencies to examine current avenues available to them to recruit and maintain their federal employees.

I would like to address just a couple of options the agencies now have available.

First, Telecommuting. Agencies can now offer telecommuting, also known as telework, or programs that allow employees to work at home or another approved location away from the regular office. While existing flexibilities exist on telecommuting, Congress has also acted to promote its use. In the FY 2006 State, Justice Commerce Appropriations bill, language

was included in Sec. 617 requiring each department or agency to report to Congress on telecommuting and to maintain a telework coordinator. Earlier, in 2000, Congress passed legislation requiring executive agencies to establish telecommuting policies to the extent possible. And NTEU has negotiated telework agreements with management in many federal agencies.

In surveying the thirty agencies represented by NTEU, we found mixed results in terms of management's commitment to the concept. Experience has shown that telework can bring increased productivity due to uninterrupted time for employees to plan work and carry it out. It also saves energy, reduces air quality problems and congestion on our roads while enhancing the quality of family life. We found successful programs at the IRS and Patent and Trademark Office. We also found resistance to telecommuting at the Bureau of Alcohol, Tobacco and Firearms (AFT), the Security and Exchange Commission (SEC) and the Office of the Comptroller of the Currency (OCC).

There is no doubt in my mind that OPM could be playing a more prominent role in assisting agencies to move forward on their telecommuting and telework policies.

Second, Compensation and Salary. Mr. Chairman, a quick look at OPM's handbook will show the many areas in which OPM and federal agencies have the authority to offer special salary and compensation without requiring additional legislation. I have called upon the OPM Director, for example, to grant Special Salary Rates under Title V to federal workers in the New Orleans area who continue to face skyrocketing expenses like higher rents, gas, commuting costs, and insurance premiums after the devastation of the Gulf Coast Hurricanes. No legislation is needed for this. Federal agencies simply need to make their case to OPM and OPM can grant special salary relief.

Many, many other compensation flexibilities exist at federal agencies and I won't go into all of them here. But The Government Accountability Office (GAO) reported in its study of human capital flexibilities a few years ago that "monetary recruitment and retention incentives, such as recruitment bonuses and retention allowances...and incentive awards for notable job performance and contributions, such as cash and time-off awards" ranked as among the "most effective flexibilities" (GAO-03-2).

Third, Student Loan Repayments. This benefit could be critical to recruiting top notch qualified public servants. Under this existing authority, agencies may repay federally insured student loans as an incentive for attracting candidates. An agency may pay up to $10,000 per employee in any calendar year or a total of $60,000 per employee. I would like to see, Mr. Chairman, a report from the agencies on how many are using this excellent opportunity to recruit federal employees. Unfortunately, I suspect, not many are.

Conclusion

In summary, I will be brief: 1) There is no hard evidence that the current pay system for federal employees needs to be changed; 2) The current experiments with alternative pay systems

are failing; and, 3) The government should use the flexibilities it currently has before moving to new pay system experiments.

But most of all, a federal personnel system should recognize and reward leadership, foster opportunities for input and ensure a fair compensation system that is transparent and credible.

Mr. DAVIS OF ILLINOIS. Thank you very much.
Mr. Cox.

STATEMENT OF J. DAVID COX

Mr. COX. Thank you, Mr. Chairman, for the opportunity to testify today on an important issue such as Federal pay. As has been the case for so many issues, the Bush administration has been relentless in its efforts to politicize Federal pay. The methods used have been numerous and sometimes clandestine, but unfortunately very effective.

First and foremost has been the campaign to replace a system based on objective market data with one based on subjectivity and discretion.

Second has been a campaign to suggest that the data produced by the Department of Labor and calculated according to sound statistical procedures by professionals at OPM are fatally flawed and should be replaced by back-of-the-envelope calculations, so-called market research, and private data on an agency-by-agency, supervisor-by-supervisor base.

Next come the contrary claims that the Government must contract out because it cannot match the high salaries demanded by cutting-edge professionals versus the Government overpays its lazy bureaucrats and needs a new personnel system with the flexibility to deny raises to those judged over market by their bosses. We have seen bonus programs at the DOD that have substantially given more to political appointees than career employees, and pay for performance schemes that want to judge Federal employees on how effective they carry out the President's management agenda.

The list is long and threatens to grow longer.

When the administration hasn't been busy trying to privatize our jobs, it has been focused on taking away our rights and protections as Federal employees. There is a reason Federal employees have had job protections that are different from the private sector. The merit system principles ensure that Federal agencies and programs are administered by a work force that is hired and paid solely on the basis of objective, apolitical criteria.

Pay for performance is a grave threat to this merit system, and the political independence of the Federal work force, since it is a political initiative that can be sold using slogans and assurances that are difficult to review. After all, how can one oppose the concept of rewarding excellence or giving workers financial incentive to become more efficient and productive. When said in this context, pay for performance sounds as though it will both pay for itself and improve the output and morale of the work force. Who could oppose it? But what is really at work with pay for performance is the ability of a Federal manager to discriminate among employees for any reason and call it performance.

Pay is such a crucial aspect of employee that the authority to manipulate it by setting a worker's base pay and deciding whether and by how much to adjust that pay each year gives the political appointees that control agencies enormous power.

Under the general schedule, Federal jobs are classified according to duties. Salaries are assigned to jobs on the basis of market data. Employees are able to progress through a career ladder if they

meet objective performance criteria. And Congress each year decides salary adjustments on the basis of national and local labor market data collected by the Bureau of Labor Statistics. No political interference whatsoever.

Pay for performance schemes also undermine congressional authority. Law makers may vote to fund annual payroll adjustments to express their support for Federal work force and the programs they administer and the services they provide, but giving political appointees the discretion to manipulate the distribution of those payroll dollars means a simple vote to adjust Federal pay will not produce the intended result.

However much power Congress means to accede to the executive branch, this administration always takes the ball and runs with it. With pay for performance, that means the merit system protections get the shaft.

It is in this context that I hope you consider the recently published Partnership for Public Service Survey of Human Capital Officers' Opinions on the GS System. All of these individuals are political appointees by the President charged with carrying out his agenda. We know how this administration feels about folks who think for themselves; as such, it is no more surprising to learn that they all think the general schedule must go and then to learn that the Bush administration appointees all think the war in Iraq is going great. It doesn't deserve any more comment than that, Mr. Chairman.

Federal pay should not be a contentious issue. It should be a matter of market data. It should be subject to public scrutiny, should be adequate to allow the Government to recruit and retain high-quality work force dedicated to public service, and should allow its employees to at least take the Federal employee health insurance, participate in the thrift savings plan, and, most of all, have a decent quality of life, raise their children, and pursue the American dream.

Mr. Chairman, this concludes my statement. I will take any questions.

[The prepared statement of Mr. Cox follows:]

AFGE Congressional Testimony

STATEMENT BY

J. DAVID COX
NATIONAL SECRETARY-TREASURER
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE SUBCOMMITTEE ON FEDERAL WORKFORCE, POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

REGARDING

FEDERAL PAY POLICIES AND ADMINISTRATION

ON

JULY 31, 2007

Mr. Chairman and Members of the Subcommittee: My name is J. David Cox, and I am the National Secretary-Treasurer of the American Federation of Government Employees, AFL-CIO. On behalf of the more than 600,000 federal and District of Columbia employees our union represents, I thank you for the opportunity to testify today on the important issue of federal pay.

As has been the case for so many issues, the Bush Administration has been relentless in its efforts to politicize federal pay. The methods of politicization have been numerous and sometimes clandestine, but unfortunately, very effective. First and foremost has been the campaign to replace a system based upon objective market data with one based upon subjectivity and discretion. Second has been a campaign to suggest that the data produced by the Department of Labor and calculated according to sound statistical procedures by professionals at the Office of Personnel Management are fatally flawed, and should be replaced by back-of-the-envelope calculations, "market research" and private data on an agency-by-agency, supervisor-by-supervisor basis. Next come the contradictory claims that a) the government must contract out because it "cannot" match the high salaries demanded by cutting-edge professionals vs. b) the government overpays its lazy bureaucrats and needs a new personnel system with the flexibility to deny raises to those judged "over market" by their bosses. We have seen bonus programs at the Department of Defense that gave substantially more to political appointees than career employees, and pay-for-performance schemes that want to judge federal employees on how effectively

they carry out the President's highly political "management agenda." The list is long, and threatens to grow.

In my statement today I want to focus on two main issues: how pay for performance inevitably undermines the merit system principles, and how enormous is the difference between what the government allows for contractor salaries versus the salaries of federal employees.

Pay For Performance and the Merit System Principles

When the Bush Administration has not been busy trying to privatize our jobs, it has been focused on taking away our rights and protections as federal employees. There is a reason federal employees have had job protections that are different from those which apply to employees in the private sector. The Merit System Principles[1] assure taxpayers that federal agencies and programs will be administered by a workforce that is hired and paid solely on the basis of objective, apolitical criteria. But the personnel systems, including so-called "pay for performance" that the Bush Administration is imposing in the Departments of Defense and Homeland Security, and has sought authority to impose on the rest of government, are a grave threat to the Merit System.

As with "best value contract awards in the realm of outsourcing, discretion on the part of political appointees and those they supervise is the name of the

[1] The nine Merit System Principles are defined in Section 2301 of Title 5 of the U.S. Code. They say that federal employees should be hired competitively, promoted solely on the basis of ability, and should be treated fairly and without regard to politics, race, religion, national origin, gender, marital status, age, or handicap. Federal employees are to receive equal pay for equal work; employees must maintain high standards of integrity, conduct and concern for the public interest. They should be employed efficiently, provided with training, and protected from any kind of political coercion, or reprisals in response to legitimate "whistle-blowing."

game. "Pay for performance" has perhaps the greatest potential for undermining the political independence of the federal workforce, since it is a policy initiative that can be sold using slogans and assurances that are difficult to rebut. After all, how can one oppose the concept of "rewarding excellence" or giving financial incentives to employees to become more efficient and productive? When set in this context, "pay for performance" sounds as though it will both pay for itself and improve the output and morale of the federal workforce. Who could oppose it? Only "poor performers," as David Chu, the Undersecretary of Defense for Personnel and Readiness asked rhetorically in a 2003 Senate hearing on the Department's proposed National Security Personnel System (NSPS). But what is really at work with "pay for performance" is the ability of a federal manager to discriminate among employees for any reason and call it "performance."

Pay is such a crucial aspect of employment that the authority to manipulate it by setting individual workers' base pay and deciding whether and by how much to adjust that pay each year gives the political appointees who control agencies enormous power over the federal workforce. Under the current General Schedule pay system, federal jobs are classified according to duties, and salaries are assigned to jobs on the basis of market data. Individual federal employees are able to progress through a career ladder if they meet objective performance criteria, and Congress each year decides salary adjustments on the basis of national and local labor market data collected by the Bureau of Labor Statistics (BLS).

But the pay for performance schemes that are central to MaxHR in the Department of Homeland Security and NSPS in the Department of Defense promote individualized pay. Two people with the same job duties hired the same day in the same place can be offered different salaries, and in the future, despite similar performance, can be given vastly different salary adjustments. Supervisors can cite from among a myriad of factors to explain a decision to withhold, reduce, or increase salary adjustments for individual employees. An employee may not receive a raise in a given year because the agency is not experiencing recruitment or retention difficulties in her occupation. Another possibility is that despite her success in meeting or exceeding all performance targets, her coworkers might be so superior that all the money went to rewarding them. Her performance might be satisfactory, but not above and beyond expectations. She might have a child with an illness that forced her to take a short leave of absence, and thereby undermined her eligibility for a salary adjustment regardless of her performance before and after her leave. Her supervisor might not like her, her politics, her philosophy of life, or her hairstyle.

Different pay adjustments for different individuals may also be the result of different types of assignments. The relative performance of their coworkers competing against one another or a share of the "pay pool," is likely to be a crucial factor, giving each employee a financial stake in the failure of others. The funding available to the component of the agency where one works will also be a factor, along with questions of whether the agency provided adequate staffing or other resources to facilitate good performance, such as training; or even whether

one's supervisor is in a good or bad mood, or failed or succeeded to be persuasive relative to other supervisors on the day the "pay pool" free-for-all took place. All in all, the pay systems designed under the personnel authorities in DHS and DoD render the Merit System Principles unenforceable. Any rationale can justify any action, and employees have recourse only to internal agency boards for appeals.

These pay and personnel systems also undermine Congressional authority. Lawmakers may vote to fund annual payroll adjustments to express their support for the federal workforce and for the important missions of the programs they administer and the services they provide. But the discretion granted to agencies and their political appointees to manipulate the distribution of those payroll dollars means that a simple vote to adjust federal pay will not produce the intended result. However much power Congress intended to cede to the executive branch, this Administration has taken the ball and run with it, and the restrictions on collective bargaining, grievance procedures, and access to the Merit Systems Protection Board (MSPB) all conspire to undermine accountability even further. The most sacred public responsibility of federal employee unions is to serve as a check and balance on political appointees' efforts to politicize and otherwise undermine government programs and agencies. This ability has been severely affected by the abolishment of union rights.

The President's FY08 budget expressed the intention to continue to undermine the federal workforce through privatization and government-wide personnel "reform" that would expand the damage to the civil service beyond

DHS and DoD. AFGE will continue to oppose these systems. Our members have made clear that all they desire is the opportunity to do their jobs, free from political interference, free from the constant threat of politically-motivated outsourcing, and free from the necessity to play political games to win the favor of those who will decide their pay raise. They want their salaries to reflect their job responsibilities and the salaries paid to those who do similar work either in the private sector or in state and local government, as the Federal Employees Pay Comparability Act (FEPCA) provides.

While the danger "pay for performance" schemes pose to the political independence of the civil service is their most serious flaw, it should also be understood that these systems also threaten the government's ability to recruit and retain the next generation of federal employees. More than half of the federal workforce is currently eligible to retire, and Congress has granted agencies authority to utilize an enormous array of incentives to recruit their replacements. However, in cases where agencies have not bowed to Administration pressure to replace all retiring federal employees with private contractors, federal salaries have often proven to be an obstacle to recruitment.

This is not only the case in DoD and DHS where the combination of outsourcing gone wild, inadequate salaries and a future of politicized salary adjustments create particularly uninviting prospects for new employees. It is also the case for federal employees who remain in the General Schedule locality pay system. The law which created locality pay for federal employees, FEPCA, was passed in 1990, and set forth a schedule for gradually closing measured

disparities between federal and non-federal pay over the course of nine years. Comparability, defined in the law as 95 percent of the rates set in private labor markets, was supposed to have been achieved in 2002. However, only in 1994 did Congress provide funding to adjust federal salaries in accordance with the law's schedule. In each year since, the president used his authority to invoke one of many of FEPCA's "loopholes" for providing an alternative to the scheduled locality adjustments – and as a result, since 1995 progress toward comparability has been much slower than the law envisioned.

The size of the measured gap between federal and non-federal pay has changed in recent years because of the conversion to a new data set and the introduction of new data into that survey. Originally, FEPCA was designed to ensure that the size of the gap would not grow: all federal employees would receive an annual adjustment based upon the Employment Cost Index (ECI), a BLS measure of changes in private sector pay. That way, federal employees would not be chasing a moving target in their pursuit of pay comparability (defined as attainment of the "target gap" of 5 percent). But since BLS lost funding for the survey that compared federal salaries with those in the private sector on an occupation by occupation basis after just one cycle, the gaps used for calculating progress toward comparability were based upon a statistical process that "aged" that initial data.

Eventually, BLS began to collect data appropriate for use in federal locality pay through the National Compensation Survey (NCS), which was incorporated gradually into to the aged data until this year when the disparities were measured

entirely with NCS data. In the meantime, BLS instituted various improvements in NCS data, incorporating more and more federal job matches, and thus making the data ever-more precise for measuring pay disparities between federal and non-federal pay. This year, when data were added that reflected private sector salaries for four levels of supervisory employees, the result was that measured pay gaps in some localities changed dramatically. The largest change was in the Washington, D.C. – Baltimore locality, where the size of the gap increased by 13.99 percentage points. Atlanta, Boston, Chicago, Cleveland, Los Angeles, New York, Phoenix, Richmond, and "Rest of U.S." rose significantly as well. On average nationwide, the size of the measured gap rose from 13.4 percent to 18.4 percent between 2005 and 2006, almost completely because of improvements in data.

These additional data caused a new picture to emerge with regard to *relative* progress toward comparability among the various localities. Based upon the new data, it emerged that some localities had as much as 88 to 89 percent of their target gaps closed, i.e. they were 88 to 89 percent of the way toward 95 percent comparability with the private sector, while others, such as New York and San Francisco were only 53 to 55 percent of the way toward their comparability goal. In light of this new data, President Bush decided to allocate the paltry 0.5 percent allocated to locality pay in such a way that every locality would have the same percentage progress toward comparability.

That meant that for 2007, federal employees received 1.7 percent ECI-based adjustments, and widely varying amounts of the 0.5 devoted to locality

pay. Those outside of major metropolitan areas, the "Rest of U.S." category received 1.8 percent overall salary adjustments, while those in the Washington, D.C. –Baltimore locality received 2.64 percent, those in New York got 3.02 percent, and those in San Francisco locality received 3.0 percent.

Why was so little available for locality pay in 2007? Although both houses of Congress had voted to adjust federal pay by 2.7 percent this year, the appropriation bill that contained this increase never became law. Thus President Bush was able to exercise his authority under FEPCA to impose a pay raise of his choosing, and he chose 2.2 percent. He then chose to allocate locality pay in such a way as to leave about 681,000 federal employees with raises below 2.2 percent, roughly 54 percent of the total General Schedule workforce.[2]

Although decades worth of surveys of federal employee attitudes show how highly they value the missions of the federal programs and agencies where they work and how devoted they are to public service generally, the fact is that like any members of the working and middle class, federal employees' highest priority is to be able to support their families and provide them with economic security. Although federal pay has always been modest, for generations a federal job did provide a decent standard of living and good opportunities for career development. Today, however, both the existing FEPCA-based federal pay system as well as the looming threat posed by DoD's and DHS's "pay for

[2] According to OPM data, the following localities received overall raises (1.7% ECI plus locality) below 2.2%: Cleveland, Denver, Detroit, Portland, Oregon; Miami, Pittsburgh, Cincinnati, Houston, Richmond, Virginia; Huntsville, Indianapolis, Columbus, and Rest of U.S. The actual number of employees who received these raises, which ranged from 2.18% to 1.81%, was 680,877 or 54.52% of GS workers. The range of raises above 2.2% was a high of 3.02% in New York to 2.21% in Phoenix.

performance" schemes, are making it difficult for many federal employees in particularly high cost cities to make ends meet.

Exorbitant housing prices in California, New York, Boston, Washington, D.C. and other cities with concentrations of federal employees have occasioned petitions to the Federal Salary Council for supplemental salary adjustments based upon the cost of living. The premiums for health insurance under the Federal Employees Health Benefits Program (FEHBP) have also far outpaced federal salary increases for over a decade. During the last four years, cost shifting in FEHBP has made matters even worse by forcing federal employees and retirees to shoulder ever higher portions of the increases. Combining these factors with the Administration's unwillingness to fund the pay comparability system has created enormous hardship for federal employees, and creates the self-fulfilling, self-inflicted prophecies regarding the government's projected difficulty in recruiting the next generation of federal employees.

President Bush proposed a 3.0 percent total increase for federal pay for 2008. That amount just equals the relevant Employment Cost Index measure for the 2008 raise, although FEPCA slices 0.5 percentage points off that figure for the annual across-the-board raise. In effect the President is probably recommending 2.5 percent ECI plus 0.5 percent for locality pay. As this year's experience demonstrated, 0.5 percent for locality pay is grossly inadequate. AFGE supports the 3.5 percent federal salary adjustment for both civilian and military employees that the Congress has passed. AFGE also urges Congress to continue to extend this raise not only to federal blue collar employees, but to all

civilian DoD and DHS employees in the GS system. While this will certainly not solve all the government's problems with regard to pay, recruitment, retention, and fairness, it would take us a fair distance in the right direction and is eminently affordable.

Federal Salaries versus Allowable Charges for Salaries for Contractors

Although the size and composition of the contractor workforce remains "top secret" some amateur cryptologists have made educated guesses. The most frequently cited is that of the Brookings Institution's Paul Light, whose current estimate is roughly eight million. Whatever the exact figure, it seems clear that the number of contractors is far larger than the official federal workforce that numbers 1.8 million. Whether contractors outnumber federal employees three to one or four to one, it seems undeniable that the government's policies for contractor salaries should be a part of any discussion of federal pay. After all, when contractors and federal employees are working side-by-side in what some call, optimistically, a "blended workforce" the issue of comparability takes on even more urgency.

As discussed above, the federal salaries are modest by design; the goal of FEPCA is not market comparability, but 95 percent of comparability. The normative philosophy behind this under-market target is the idea that those who serve the public should be in it for something other than money. While altruism, patriotism, and a strong public service mentality are widespread among federal

workers, it seems to have bypassed the shadow, contractor workforce, at least as far as demands for cash compensation go. Let us start at the top.

For 2007, the Federal Acquisition Regulation (FAR) permits contractors to charge the government up to $597,912 per year for each of the top six corporate officers they employ. Of course, that does not mean that these contractor executives are limited to $600,000 per year in taxpayer-financed salaries. Indeed, they can be paid any amount their shareholders will approve. It is just a matter of allocating shares of the profits charged on the overall amount of the firm's aggregate contracts. And that is how, for example, a contractor like Lockheed Martin, for which the federal government is almost the only customer, can pay its CEO $18.6 million per year.[3] Importantly, the FAR only limits salaries that can be charged for the top six corporate officers. Contractors can and do charge the government *any* "reasonable" amount for salaries for *any* number of employees below that level. Thus, a scientist, engineer, lawyer, or other highly-trained professional can cost US taxpayers any amount, and it is entirely legal. It is just that ordinary citizens cannot see those numbers, another government secret, this time held securely by the Defense Contract Audit Agency (DCAA). If these data were available to the public that pays the bill, we would learn that taxpayers provide far in excess of $600,000 per year to numerous individuals who work exclusively on federal government contracts.

[3]Although almost entirely financed by US taxpayers (according to Lockheed Martin's 2006 Annual Report, "84% of its net sales were to the U.S. government. Sales to foreign governments (including foreign military sales funded, in whole or in part, by the U.S. Government) amounted to 13% of net sales...while 3% of our net sales were made to commercial and other customers. Lockheed Martin 2006 Annual Report, page 3.

Although Lockheed Martin is known as the number one aerospace and defense contractor, it also holds the number five spot among top service contractors, with $2.2 billion worth of service contracts in 2006. Nevertheless, it is instructive to contrast the parameters of allowable pay for real federal employees at NASA, with what the federal government allows top employees working indirectly for the government at Lockheed. The Administrator of NASA is paid $186,600 (the maximum for Cabinet Secretaries), members of the federal Senior Executive Service at NASA are paid no more than $168,00 per year excluding bonuses and up to $215,700 with bonuses; and most important, the NASA scientists and engineers who are federal employees - including last year's Nobel-Prize winner in Physics and his team, are limited to $154,000 per year, and the reason it is even that high is thanks to the *flexibility* of FEPCA's "special rate authority." But isn't it impossible for the government to hire the best scientists due to the inflexibility of the federal personnel system? Isn't that what the privatizers and advocates of pay for performance insist? Tell that to the federal employees who formulated and worked on NASA's Cosmic Background Explorer Project (COBE) which won the 2006 Nobel Prize and was carried almost entirely by in-house NASA scientists (James Mather and George Smoot shared the prize, the former a full-time NASA employee; the latter a professor at University of California, Berkeley and sometime employee of NASA).

Another large government services contractor, SAIC, which is number two behind Haliburton in total service contracts for 2006 (and which ranked, ironically, as the number three recipient of small business federal contracts last year) had

$8.3 billion in revenues in year ending January 31, 2007. SAIC's most recent 10-K states that 93% of total consolidated revenues in fiscal 2007, 2006, and 2005 came from its Government Segment, and "within the Government segment, substantially all of our revenues are derived from contracts with the US Government. Further, the SEC filing goes on to describe its contract types and how each provides various types of reimbursement for labor costs. This is relevant because what SAIC sells to government agencies is labor services or "labor hours"– in the form of "a wide array of technical services and solutions" and they are, of course, always at the "cutting edge."

At what price do taxpayers buy these "cutting edge" labor hours from SAIC? Last year, the SAIC CEO was paid $2.1 million in cash compensation, and an additional $625,000 and change in restricted stock awards and security options, far more than the Secretaries of Defense, Homeland Security, and the heads of Intelligence agencies to whom SAIC sells its services. And what about the rank and file workers who staff these contracts? No one knows. Taxpayers pay the bill for SAIC, but taxpayers cannot learn how much SAIC pays the employees who do government work under its name. All we know is how much SAIC charges in the aggregate for its contracts.

Whether it is the data from the Department of Labor describing the federal-non-federal pay gap, or the data from the Federal Procurement Data System (FPDS) that shows only how much contractors charge, we are left with one conclusion: federal employees are a bargain, in part because their salaries are so low.

Why pick on poor Lockheed Martin and SAIC? And why raise the issue of contractor salaries at a hearing on federal pay? Because they are the contractors of choice for the federal government's outsourcing and privatization of government work previously performed by federal employees. They are the contractor of choice for new government work, and expansions of government work. There is little that Lockheed Martin or SAIC do for their customer, the U.S. Government, that federal employees could not do at a far lower cost to taxpayers. But it is instructive, in the context of considering the adequacy of federal employee salaries, to consider the question of why federal agencies have been able to fund contractors' payrolls so generously, and why there never seems to be enough funding available to provide even the 95 percent of comparability that FEPCA is designed to provide. Are our exemplary NASA underpaid relative to contractors, or are the contractors overpaid relative to federal employees? Our answer is that we believe that all who perform work for the government, and whose salaries are financed by taxpayers, should be paid a fair salary determined by objective market data. Whether the work is scientific, janitorial, clerical, or managerial, taxpayers should pay about the same whether the work is done directly for a government agency, or indirectly, for a profit-making corporate contractor. The relatively generous salaries permitted through the FAR for contractors give lie to the persistent contention that FEPCA's standards for market comparability are unaffordable, or that federal employees are already paid too much. And we think serious consideration should be paid not only to the Department of Labor's measure of the federal-non-federal pay

gap, but also to the gap between the FAR's salary allowances and the General Schedule.

Conclusion

Federal pay should not be a contentious issue. It should be a matter of market data. It should be subject to public scrutiny. It should be adequate to allow the government to recruit and retain a high quality workforce dedicated to public service and capable of carrying out the missions of every federal agency and program. It should be consistent with the merit system principles, and absolutely protected from influence by political appointees who would use it to coerce career employees to implement a particular political agenda. Federal pay should be high enough so that all federal employees are able to support themselves and their families with a dignified standard of living, including being able to afford to participate in the Federal Employees Health Benefits Program and the Thrift Savings Plan. And federal pay should not vary substantially depending upon whether the work is being performed by a federal employee or a member of the "shadow" government workforce of contractors. This concludes my statement. I would be happy to answer any questions members of the Subcommittee may have.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Cox.
Mr. Copeland.

STATEMENT OF CURTIS COPELAND

Mr. COPELAND. Thank you, Mr. Chairman, Mr. Marchant. Thank you for inviting me to testify at today's hearing on Federal pay.

Although there are dozens of different Federal pay systems currently in use, I will focus on three issues related to the major Federal white collar pay systems, the first of which is the annual general schedule pay adjustment process.

Although this is commonly referred to as a cost of living adjustment [COLA], the actual adjustment is driven by measures of the cost of labor outside the Federal Government. The adjustment process was established by the Federal Employees Pay Comparability Act of 1990 [FEPCA], which actually requires two kinds of adjustments, one which is the same for all covered employees, and the other which varies depending on non-Federal pay rates in 32 areas of the country.

The locality pay portion of the adjustment was intended to eventually bring Federal salaries to within 5 percent of non-Federal pay in those areas; however, Federal pay adjustments have almost never been implemented through this FEPCA process, with either the President or Congress intervening to determine the size of the overall increase.

Another major Federal pay issue is the increasing degree of pay compression occurring within and between the different white collar pay schedules. For example, the difference in pay between Cabinet Secretaries and the top of the Senior Executive Service is now only about one-third of what it was in 1991. Senior-level employees can currently earn more than the heads of small agencies that are statutorily paid at executive levels four and five.

Members of the Senior Executive Service who work in agencies with performance appraisal systems that have been certified by OPM can receive pay and bonuses that equal the salary of the Vice President, more than Cabinet Secretaries who are not eligible for bonuses.

Pay compression is also starting to affect regular GS employees. For example, because GS pay cannot exceed executive level schedule four, certain GS employees in nine locality pay areas are currently unable to receive full locality pay adjustments. Without changes in executive schedule pay caps or linkages, these pay compression problems will only become more severe over time.

There have also been a number of proposals to reform the Federal pay system, as has been mentioned today, such as making employee pay more a function of organizational performance or employee performance, which has been referred to as performance-based pay. Some agencies have already begun implementing these reforms, as has been mentioned, and studies of the implementation of the performance-based pay systems in the Federal Government have been done by GAO, MSPB, and a number of other organizations. They have all generally reached the same conclusion: agencies must have valid, reliable, accepted performance appraisal systems in place before linking pay to performance.

Legislation has been introduced in this Congress that could make Federal pay systems somewhat more performance based. For example, S. 1045 introduced by Senator Voinovich would require employees to have a performance rating of at least fully successful to receive annual pay adjustments, locality pay, or other types of increases.

Market base pay is another type of pay reform that has been garnering attention, as has been mentioned. Although the market has always been a factor in the implementation of FEPCA and in setting special pay rates, GAO, as you know, recently used market pay data to conclude that some of its employees were already overpaid and therefore should not receive an annual pay adjustment. However, at a hearing in this subcommittee in May an expert in market-based pay criticized how this market study was conducted and how GAO used the results.

This experience suggests that great care must be taken in determining what constitutes the relevant market and the relationship of individual Federal occupations to that market.

OPM has submitted draft legislation on yet another pay reform, as the Director mentioned, converting white collar Federal employees in what are known as non-foreign areas like Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, into the locality pay system. Since 1948, these employees have received tax-free supplements of up to 25 percent of base pay in order to improve recruitment and retention, but those supplements have not counted toward their pay when calculating retirement.

Switching from these cost-of-living-based supplements to cost-of-labor-based compensation, which do count as base pay—these locality payments—represents a major change in compensation philosophy. OPM has estimated that doing so will cost more than $100 million over the next 10 years.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer any questions.

[The prepared statement of Mr. Copeland follows:]

Statement of Curtis W. Copeland
Specialist in American National Government
Congressional Research Service

Before

The Committee on Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service, and the District of Columbia
House of Representatives

July 31, 2007

on

"Federal Pay Policies and Administration"

Chairman Davis and Members of the Subcommittee:

I am pleased to be here today to discuss certain issues related to federal pay policies and their administration. In preparing the testimony, I closely collaborated with my CRS colleague, Barbara Schwemle.

Federal pay and compensation is a significant, perennial issue facing Congress for a variety of reasons. First, as one might expect, changes to federal rates of pay and the manner in which those rates are determined are of interest to the nearly 2 million members of the federal workforce, and are therefore of interest to many Members of Congress who represent those employees. Also, federal pay is always a major budgetary item. According to the President's FY2008 budget request, actual federal civilian compensation costs in FY2006 were nearly $100 billion, and those costs are expected to approach $110 billion by FY2008.[1] Total civilian and military compensation and benefits were estimated to be more than $370 billion in FY2008. Finally, federal pay is a key component in allowing agencies to attract and retain the workforce they need to accomplish their missions.

---

[1] Office of Management and Budget, *Object Class Analysis: Budget of the U.S. Government, Fiscal Year 2008*, p. 11, available at [http://www.whitehouse.gov/omb/budget/fy2008/pdf/objclass.pdf].

There are literally dozens of government-wide and agency, institution, or occupation-specific federal pay systems currently in effect, including schedules for the federal judiciary, Congress, blue-collar workers, health care workers in the Department of Veterans Affairs, administrative law judges, and the military. My testimony will focus on the major federal white-collar pay schedules, and will discuss some of the current issues related to those schedules. In brief, those issues are (1) the annual pay adjustment process pursuant to (or, perhaps more accurately, in spite of) the Federal Employees Pay Comparability Act of 1990; (2) pay compression within and between the different pay schedules; and (3) various reform efforts in recent years, including performance-based pay, market-based pay, and proposals to change the pay system for employees living in what are known as "non-foreign" areas of the United States.

Major Federal White-Collar Pay Schedules

First, however, I would like to provide a brief overview of the major white-collar federal pay schedules — the General Schedule (GS), the schedule for Senior Level (SL) and Scientific or Professional (ST) positions, the Senior Executive Service (SES) schedule, and the Executive Schedule (EX). **Appendix I** of my testimony provides summary information on each of these four schedules.

Created by the Classification Act of 1949, the GS pay system is by far the largest, with more than 1.3 million of the federal government's 1.8 million employees in the GS or GS-related pay systems as of March 2007. The GS is divided into 15 grades of difficulty and responsibility of work, with 10 steps within each grade that employees progress across through longevity and at least an acceptable level of performance. The salaries associated with each GS grade and step currently vary by locality; in Washington, DC they range from a low of $19,722 to a high of $143,471. By statute (5 U.S.C. §5303), base GS pay (i.e., without the locality differential) cannot exceed Level V of the Executive Schedule (currently $136,200). Base pay and locality pay combined cannot exceed Level IV of the Executive Schedule (5 U.S.C. §5304(g)(1), currently $145,400).

The Executive Schedule (EX), established by Section 303 of P.L. 88-426 in August 1964, consists of five pay levels. Generally, Level I of EX (hereinafter, EX-I) includes cabinet-level officials; Level II includes deputy secretaries of departments, secretaries of military departments, and heads of major agencies; Level III includes under secretaries of departments and heads of middle-level agencies; Level IV includes assistant secretaries and general counsels of departments, heads of smaller agencies, and members of certain boards and commissions; and Level V includes administrators, commissioners, directors, and members of boards, commissions, or units of agencies. EX-I through EX-V positions are specified in statute at 5 U.S.C. §§5312-5316. As of March 2007, the Executive Schedule covered 475 employees in the highest levels of federal agencies. Of these, 280 were in cabinet departments, including 36 in the Department of Defense (DOD), 31 in the State Department, 25 in the Department of Justice (DOJ), and 21 each in the Departments of Commerce, Energy, and the Treasury.

The Senior-Level (SL) and Scientific or Professional (ST) pay schedules cover positions above GS-15 and in scientific or professional positions. Section 102 of P.L. 101-509, the Federal Employees Pay Comparability Act of 1990, enacted on November 5, 1990, established the SL and ST schedules by combining the positions at grades GS-16, GS-17, and GS-18. As of March 2007, the SL and ST schedules covered 928 employees, including 152

in DOD, 116 in the Smithsonian Institution, 86 in DOJ, and 73 in the Department of the Interior.

The Senior Executive Service (SES) was established by the Civil Service Reform Act of 1978 (P.L. 95-454), and, as of March 2007, covered more than 7,300 federal executives — more than 6,400 of whom are career employees selected for the SES by meeting executive core qualifications. Noncareer SES appointees do not have to meet the same competitive selection requirements, but they also do not receive the same entitlements as career senior executives. As of March 2007, nearly 75% of the SES were in Washington, DC, Virginia, or Maryland, and the agencies with the largest number of SES employees were DOD (1,215) and DOJ (678). A new pay system for the SES was established in 2004 by Section 1125 of the FY2004 National Defense Authorization Act (P.L. 108-136). Key features of the new pay system, which took effect in January 2004, include the elimination of locality pay and annual pay adjustments (which were provided in conjunction with annual adjustments for General Schedule and Executive Schedule employees); the replacement of six pay rates (ES-1 through ES-6) with one broad pay range ($111,676 to $154,600 as of January 2007); an increase in the cap on base pay from EX-IV to EX-III; and the addition of a second, higher cap, EX-II, for SES appraisal systems that have been certified by OPM as making "meaningful distinctions" among employees based on relative performance.

Annual Pay Adjustments

A perennial issue of concern to federal employees (and to many Members of Congress) is the size and timing of the annual pay adjustment for GS employees. Although commonly referred to as a "cost of living adjustment" or "COLA," the pay adjustment is actually two adjustments, and has little to do with cost of living. Rather, it is driven by (1) changes in the cost of labor nationwide and (2) comparisons of non-federal and federal pay within particular localities.

Annual adjustments for federal employees under the GS and certain other systems are governed by Section 529 of Public Law 101-509, the Federal Employees Pay Comparability Act of 1990 (FEPCA), which generally requires that covered employees receive an annual basic pay adjustment and a locality-based comparability payment. The same amount of basic pay adjustment is provided to all covered employees, and is based on the Bureau of Labor Statistics (BLS) Employment Cost Index (ECI), which measures changes in private sector wages and salaries. Federal pay rates are generally required to be increased by an amount that is 0.5% less than the percentage change in the ECI from one year to the next, but the law stipulates a 15-month lag at the time of each adjustment. For example, the pay increase for January 2008 will be based on the percentage change in the ECI from the quarter ending on September 30, 2005, to the quarter ending on September 30, 2006. The ECI change for this period was 3.0%, so this formula indicates that the basic pay adjustment (i.e., without the locality differential) for January 2008 would be 2.5%. However, FEPCA also authorizes the President to issue an alternative pay plan (by September 1 of the year prior to the scheduled effective date) in the event of a national emergency or serious economic conditions affecting the general welfare. For the January 2008 adjustment, therefore, an alternative pay plan would need to be authorized by September 1, 2007.

The locality portion of the annual adjustment for GS and other employees is based on a comparison of federal pay rates for particular positions to non-federal rates of pay (as measured by BLS surveys) within designated local pay areas. In January 2008, there will be

32 such local pay areas (including one called "Rest of the United States"). FEPCA provides that payments are to be made within each locality in which federal pay rates lag behind non-federal rates by more than 5%. However, as was the case for the basic adjustment, FEPCA also permits the President to establish an alternative level of locality-based comparability payments because of a national emergency or serious economic conditions affecting the general welfare. To do so, the President must transmit a report to Congress at least one month before the comparability payments would be payable that describes the alternative level of payments and why the alternative level is necessary.

This complicated formula for calculating basic and locality payments notwithstanding, FEPCA has never been implemented without presidential or congressional intervention. No annual basic pay adjustment was made in 1994, and the adjustment was reduced in 1995, 1996, and 1998. Reduced amounts of locality payments were provided in 1995 through 2007. **Table 1** below shows the annual and locality pay adjustments made under FEPCA for the years 1991 through 2007.

Table 1. Annual and Locality Pay Adjustments Under FEPCA, 1991 to 2007

Year	ECI-Based Annual Adjustment Required by FEPCA	Annual Adjustment Authorized	Locality Payments Required by FEPCA (National Average)	Locality Payments Authorized (National Average)	Net Increase, Annual and Locality Pay (National Average, Weighted)
1991	—	4.1%	—	—	4.1%
1992	4.2%	4.2%	—	—	4.2%
1993	3.7%	3.7%	—	—	3.7%
1994	2.2%	0	3.95%	3.95%	3.95%
1995	2.6%	2.0%	6.44%	5.05%	3.08%
1996	2.4%	2.0%	8.58%	5.56%	2.49%
1997	2.3%	2.3%	11.29%	6.37%	3.09%
1998	2.8%	2.3%	14.30%	6.93%	2.84%
1999	3.1%	3.1%	16.95%	7.50%	3.65%
2000	3.8%	3.8%	20.62%	8.62%	4.89%
2001	2.7%	2.7%	23.12%	9.77%	3.76%
2002	3.6%	3.6%	25.92%	10.95%	4.72%
2003	3.1%	3.1%	27.59%	12.12%	4.21%
2004	2.7%	2.7%	25.71%	13.81%	4.24%
2005	2.5%	2.5%	25.51%	15.01%	3.54%
2006	2.1%	2.1%	25.85%	16.22%	3.19%
2007	1.7%	1.7%	24.15%	16.80%	2.24%

Sources: For the ECI-required annual adjustment, see U.S. Department of Labor, Bureau of Labor Statistics, *Employment Cost Index*, Sept. of each year. For the locality payments required by FEPCA, see *Report on Locality-Based Comparability Payments for the General Schedule, Annual Report of the President's Pay Agent*, Dec. of each year. For the annual and locality pay adjustments authorized, see E.O. 12736, Dec. 12, 1990; E.O. 12786, Dec. 26, 1991; E.O. 12826, Dec. 30, 1992; presidential memorandum of Dec. 1, 1993; E.O. 12944, Dec. 28, 1994; E.O. 12984, Dec. 28, 1995; E.O. 13033, Dec. 27, 1996; E.O. 13071, Dec. 29, 1997; E.O. 13106, Dec. 7, 1998; E.O. 13144, Dec. 21, 1999; E.O. 13182, Dec. 23, 2000; E.O. 13249, Dec. 28, 2001; E.O.s 13282, Dec. 31, 2002, and 13291, Mar. 21, 2003; E.O.s 13322, Dec. 30, 2003, and 13332, Mar. 3, 2004; E.O. 13368, Dec. 30, 2004; E.O. 13393, Dec. 22, 2005; and E.O. 13420, Dec. 21, 2006.

Presidential Request and Congressional Appropriation. One of the first indications of the possible size of the combined pay increase (basic pay increase plus average locality increase) for the next year is in the President's annual budget request, where the President indicates how large a federal pay increase he intends to support. Ultimately, though, as part of the appropriations process, Congress may legislate an overall pay adjustment that is different from the one recommended by the President in his budget message or that might be authorized by the President in an alternative pay plan.

In his annual budget request for FY2008, provided to Congress in February 2007, President Bush proposed a 3% total pay increase for federal white-collar workers — the same percentage increase as he requested for members of the uniformed military. The Financial Services and General Government appropriations bill (H.R. 2829), as passed by the House

of Representatives, includes a 3.5% increase for FY2008, and the Senate Appropriations Committee has reported the bill with the same increase. In a statement of Administration policy regarding the House bill, the Bush Administration said it "strongly opposes" the 3.5% pay increase, and characterized it as an "arbitrary across the board increase" that "would cost agencies over $600 million in FY2008 and would not target any specific recruitment or retention challenges."[2]

Civilian-Military Pay Parity. In recent years, one factor consistently raised in determining the size of the GS-pay increase has been the amount provided to uniformed military personnel. The Concurrent Resolution on the Budget, which provides the framework within which Congress subsequently considers spending legislation, has several times in the past included language expressing the sense of Congress on the federal civilian pay adjustment. The FY2008 budget resolution as agreed to by the House (H.Con.Res. 99) on March 29, 2007, includes such a provision at Section 510, which states the Sense of the House that federal civilian pay should be adjusted at the same time and in the same proportion as pay for the uniformed military. The Senate's version of the budget resolution (S.Con.Res. 21) as agreed to on March 23, 2007, does not include such a provision. On May 3, 2007, Representative Tom Davis, Ranking Member on the House Committee on Oversight and Government Reform, sent a letter to the chairmen and ranking members of the House Committee on Appropriations and its Subcommittee on Financial Services and General Government urging the committee "to ensure parity in pay adjustments for civilian and military personnel" for FY2008. In the letter, Mr. Davis stated his belief that it is critical for civilian and military personnel to receive similar pay adjustments because "Federal civilian employees from DOD, DHS, FBI, CIA, U.S. Customs Service, Secret Service, Department of Justice, Department of State, and many other agencies" support the efforts of the uniformed military and "work to ensure the security of our nation and people."[3]

Are Federal Employees Overpaid? Occasionally, articles appear in the press indicating that federal employees are paid more than the non-federal workforce. For example, an article published last month in the *Asbury Park Press* entitled "Across the nation, federal employees making top dollar" concluded that "Federal workers, on average, are paid almost 50 percent more than employees in the private sector."[4] The article stated that the area with the largest federal-private sector disparity was Nassau County, Florida, where 577 federal employees, many of them employed at an air traffic control center, were paid an average of more than $108,000 in 2005, compared with an average of less than $30,000 for private sector workers, many of whom were in the tourism and hospitality industries. Other publications have picked up on this article, raising doubts about the GS pay setting process and official studies underlying that process showing that federal workers lag behind their non-federal counterparts.[5]

---

[2] Office of Management and Budget, "Statement of Administration Policy: H.R. 2829 – Financial Services and General Government Appropriations Act, 2008," June 26, 2007.

[3] Letter from Representative Tom Davis to Representatives David Obey, Jose Serrano, Jerry Lewis, and Ralph Regula, May 3, 2007.

[4] Jason Method, "Across the nation, federal employees making top dollar," *Asbury Park Press*, June 24, 2007.

[5] Stephen Losey, "Is the pay gap real? Only for some," *Federal Times*, July 9, 2007.

The process by which GS pay rates are compared to pay rates outside the federal government within local pay areas was determined by Congress, and is administered by the Office of Personnel Management (OPM) using data collected by BLS. That process has been examined by top compensation experts in academia and elsewhere, and found to be valid and reliable.[6] Such reviews have found consistently that federal pay lags behind the private sector by as much as 50% in some localities. Federal-non-federal pay comparisons like the one published in the *Asbury Park Press* are much less precise (there, simply comparing federal and private sector salaries that are published in the BLS Quarterly Census of Employment and Wages, rather than comparing specific types of jobs and job levels). Nevertheless, concerns by Congress and the current and previous Presidents about the validity of the pay comparison process and the budgetary implications of implementing the results of that process have led to the establishment of alternative pay plans in virtually each year since FEPCA was enacted.

Pay Compression

Another major federal pay issue currently facing Congress is the increasing degree of compression between and within the different federal pay schedules. **Appendix 2** at the end of my testimony illustrates this compression by showing the salary relationships between the major schedules. For example:

- In 1991, cabinet secretaries and others at the top of the Executive Schedule (EX-I) were paid 28.2% more than employees at the top of the SES schedule (then ES-6), and ES-6 employees received the same salary as employees in EX-IV (e.g., certain inspectors general, chief financial and information officers). By 2007, however, EX-I salaries were only 11% more than what the highest paid SES employees were paid in agencies with certified performance appraisal systems, and these top SES employees received the same salaries as EX-II (e.g., deputy cabinet secretaries, Senators, and Members of the House of Representatives).[7] Interestingly, certification of an agency's SES performance appraisal system by OPM *exacerbates* this pay compression problem by raising the cap on SES pay to nearly the top of the Executive Schedule. In agencies without certified SES appraisal systems, the EX-I salaries were nearly 21% more than top SES salaries.

---

[6] For example, Charles H. Fay, Chair of the Human Resource Management Department at Rutgers University School of Management and Labor Relations said in testimony before this subcommittee that "BLS uses impeccable methodology in gathering reliable and valid data to price the GS, and applies sophisticated statistical methods to evaluate survey data and apply it to the GS for the Federal Salary Council." Testimony of Charles H. Fay before the House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia; and the Senate Subcommittee on the Oversight of Government Management, the Federal Workforce, and the District of Columbia, May 22, 2007, p. 13.

[7] As of March 2007, 2,332 SES employees (32% of all SES employees) were paid between $160,000 and $169,999. Of these, the largest number were in the Departments of Justice (266), Agriculture (217), Energy (194), Health and Human Services (189), and Defense (174). In contrast, only 68 EX employees (14% of all EX employees) were paid more than $160,000.

- In 1991, employees at the top of the SES pay schedule (then ES-6) were paid 11.3% more than GS-18 employees. In 2007, top SES employees in agencies without certified appraisal systems were paid the same as the top SL and ST employees.

- In 1991, a GS-18 employee was paid 21.4% more than an employee at GS-15, step 10. In 2007, SL and ST employees were paid only 7.8% more than GS-15, step 10 in the Washington, DC, pay area, and only 6.3% more in the San Francisco pay area.

Studies have also shown that employees in the EX pay system are losing buying power. For example, in June 2006, using the Gross Domestic Product (GDP) price deflator, the Government Accountability Office (GAO) reported that EX-I positions (e.g., cabinet secretaries) were paid 27% less in constant dollars than they were in 1970.[8] EX-II through EX-V positions had also experienced losses in inflation-adjusted dollars from 1970 to 2006, although not as much (between 7% and 11%). When using the Consumer Price Index (CPI) to adjust for inflation, GAO found that the buying power losses during this period were even greater, ranging from 25% to 41% for EX-I through EX-V.

Pay compression has begun to affect the upper reaches of the General Schedule. Because of the EX-IV cap on base and locality pay (currently at $145,400 nationwide), GS-15 employees at steps at steps 7 through 10 in nine locality pay areas are currently unable to receive the full pay increases that they would otherwise receive. Specifically, those affected are GS-15 employees:

- at step 10 in the (1) Boston-Worcester-Manchester, MA-NH, Combined Statistical Area (CSA), plus the Providence-New Bedford-Fall River, RI-MA, Metropolitan Statistical Area (MSA), Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME; (2) Chicago-Naperville-Michigan City, IL-IN-WI, CSA; (3) Detroit-Warren-Flint, MI, CSA, plus Lenawee County, MI; (4) Hartford-West Hartford-Willimantic, CT, CSA, plus the Springfield, MA, MSA and New London County, CT; and (5) San Diego-Carlsbad-San Marcos, CA, MSA;

- at steps 9 and 10 in the (1) Houston-Baytown, Huntsville, TX, CSA; (2) Los Angeles-Long Beach-Riverside, CA, CSA, plus the Santa Barbara-Santa Maria-Goleta, CA, MSA and all of Edwards Air Force Base, CA; and (3) New York-Newark-Bridgeport, NY-NJ-CT-PA, CSA, plus Monroe County, PA, and Warren County, NJ;

- at steps 7, 8, 9, and 10 in the San Jose-San Francisco-Oakland, CA, CSA, plus the Salinas, CA, MSA and San Joaquin County, CA.

Without changes in the EX-IV cap on base and locality pay, more pay areas are expected to be affected, with more GS-15 employees in those areas receiving the same amounts of pay.

---

[8] U.S. Government Accountability Office, *Human Capital: Trends in Executive and Judicial Pay*, GAO-06-708 (June 2006).

More generally, pay compression has led to a number of inconsistencies and illogical pay relationships. For example, pay rates (base and locality pay combined) for SL and ST members are capped because of the tie to the EX-III pay rate. Agency SL and ST employees can earn more than the heads of smaller agencies at EX-IV and EX-V. SES members can potentially earn more than all EX schedule members, except for EX-I. Total compensation in one calendar year for SL, ST, and SES can be up to the Vice President's salary of $215,700, an amount that is greater than what any EX employee can earn, as EX members are not eligible for awards and bonuses.

The primary drivers behind this cascading set of pay compressions appear to be limits on EX salaries and the linkages between EX and the other pay systems. If EX salaries were to rise, compression between the EX schedule and the other systems would ease. However, EX salaries are, in turn, linked to congressional salaries, with the pay for EX-I the same as that of Members of Congress. Also, under the Ethics Reform Act of 1989, the pay adjustment for the Executive Schedule can be no larger than the GS base pay adjustment, regardless of the amount specified by the relevant ECI data (the December ECI minus 0.5%), cannot be greater than 5%, and cannot be less than zero.

The Ethics Reform Act of 1989 includes two provisions under which pay rates for Members, the Vice President, federal officials paid under the EX, and certain federal justices and judges can be set. The first of these provisions provides for a quadrennial review of the salaries of federal officials by a Citizens' Commission on Public Service and Compensation.[9] The commission is to make recommendations to the President. The law requires the commission and the President to submit recommendations to Congress providing that the salaries of the

- Speaker of the House of Representatives, the Vice President of the United States, and the Chief Justice of the United States shall be equal;
- Majority and Minority Leaders of the House of Representatives and the Senate, the President pro tempore of the Senate, and Level I of the Executive Schedule (e.g., cabinet secretaries) shall be equal; and
- Senators, Members of the House of Representatives, the Resident Commissioner of Puerto Rico, Delegates to the House, Judges of the U.S. District Courts, Judges of the United States Court of International Trade, and Level II of the Executive Schedule (deputy secretaries of cabinet departments, secretaries of military departments, and heads of major agencies) shall be equal.[10]

---

[9] Ethics Reform Act of 1989, P.L. 101-194, §701(a), Nov. 30, 1989; 103 Stat. 1716, at 1763; 2 U.S.C. §351.

[10] Ibid., §701(I); 103 Stat. 1716, at 1766; 2 U.S.C. §362.

The commission, however, has never been activated. The commission was initially funded in the 1993 Treasury, Postal Service, and General Government Appropriations Act, but that appropriation was rescinded in the 1994 act.[11]

Congress has not systematically examined the EX pay system since the passage of the Ethics Reform Act of 1989, and some have called for Congress to do so now to avert even more pay compression problems in the future.[12]

Pay for Performance Reforms

Another major federal pay-related issue of late has been an attempt to move toward pay systems that are more focused on the performance of employees or their organizational units. Efforts to establish performance-based pay have a long history in the federal government. For example, Title V of the Civil Service Reform Act of 1978 created a merit pay system which was subsequently amended by P.L. 98-615, enacted on November 9, 1984. The law established a Performance Management and Recognition System, with pay based on performance for managers and supervisors in GS grades 13 through 15. There were five levels for rating performance with various amounts of pay attached to each level. An individual rated "outstanding" was to receive a full comparability raise, a full merit increase, and a performance award that generally ranged from 2% to 10% of base pay. Cash awards ranging from $10,000 to $25,000 were available to reward individuals for superior accomplishment and special service.

A more recent manifestation of this movement has been in the Senior Executive Service, where agencies with SES performance appraisal systems that have been certified by OPM as making "meaningful distinctions" among employees based on relative performance are allowed to pay their senior executives more than agencies without such certified appraisal systems. A number of individual agencies have attempted to move toward performance-based pay for some or all of their employees, including DOD, the Department of Homeland Security, and the Government Accountability Office (GAO). In early 2006, the Bush Administration drafted legislation that proposed to move the entire federal government in the direction of performance-based pay, but the legislation was never introduced.

A number of organizations have examined agencies' efforts to move toward performance-based pay, and several common lessons appear to be emerging. For example, in 2005, GAO convened a symposium on such pay systems and concluded that agencies attempting such reforms must make sure that they have the institutional infrastructure in place to ensure that the reforms are effective and properly implemented. "At a minimum," GAO said, "this infrastructure includes a modern, effective, credible, and validated performance management system that provides a clear linkage between institutional, unit, and individual performance-oriented outcomes; results in meaningful distinctions in ratings;

---

[11] Treasury, Postal Service, and General Government Appropriations Act, 1993, P.L. 102-393, Oct. 6, 1992; 106 Stat. 1729, at 1743; and Treasury, Postal Service, and General Government Appropriations Act, 1994, P.L. 103-123, Oct. 28, 1993; 107 Stat. 1226, at 1239. The appropriation of $250,000 was to remain available until Sept. 30, 1994.

[12] U.S. House, Committee on Government Reform, Subcommittee on the Federal Workforce and Agency Organization, *Executive and Judicial Compensation in the Federal Government* (Quadrennial Commission), hearing, Sept. 20, 2006. Transcript available from the committee.

and incorporates adequate safeguards."[13] Similarly, in a January 2006 report to the President and Congress, the Merit Systems Protection Board (MSPB) said that pay for performance "will require more than legislation," and that the foundation of a pay for performance system is an evaluation system that is sound in both its design and its application.[14] MSPB also concluded that agencies must tailor pay for performance systems to their missions and environments, and that agencies must be prepared to make a substantial investment of time, money, and effort before linking pay to performance.

A similar message was offered in March of this year by several witnesses during a hearing before this subcommittee on the status of federal personnel reform. For example, citing a 2006 study that reviewed approximately 2,600 research studies on the factors that motivate employees to increase their performance, Robert Tobias, Director of Public Sector Executive Education at American University, said the study concluded that "individual financial incentives are ineffective in traditional public sector settings," and that this failure "is likely due to a lack of adequate funding for merit pay and an absence of the organizational and managerial characteristics that are necessary to make pay for performance work in traditional government settings."[15] Tobias also said that a recent study of the SES pay system (in which 85% of the respondents reportedly said that the new system had no effect or a negative effect on their motivation) reinforced the basic proposition advanced by the 2006 study that "there must be the successful implementation of a performance management system before the implementation of a pay for performance system."

Legislation has been introduced in the 110th Congress that would move the entire federal government, or certain pay systems, more in the direction of performance-based pay. For example, S. 1045, introduced by Senator George Voinovich in March 2007, would (among other things) require agencies to establish one or more performance appraisal systems with at least three summary rating levels (unacceptable, fully successful, and above fully successful); and require an employee to receive a summary rating of at least "fully successful" to receive a within-grade increase, an annual basic pay adjustment, a locality pay adjustment, a special rate, or a blue-collar adjustment. Senator Voinovich has also introduced S. 1046, which would change the way SL and ST employees may be evaluated and paid. Under current law, SL and ST employees may receive basic pay up to EX-IV ($145,400 as of January 2007). S. 1046 would provide that SL and ST employees in agencies with performance appraisal systems certified by OPM as making "meaningful distinctions" in performance could receive basic pay up to EX-II ($168,000); in agencies without certified appraisal systems, SL and ST employees could receive basic pay up to EX-

---

[13] U.S. Government Accountability Office, *Human Capital: Designing and Managing Market-Based and More Performance-Oriented Pay Systems*, GAO-05-1048T, Sept. 27, 2005.

[14] U.S. Merit Systems Protection Board, *Designing an Effective Pay for Performance Compensation System*, Jan. 2006, available at [http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=224104&version=224323&application=ACROBAT].

[15] Testimony of Robert M. Tobias, Director, Public Sector Executive Education, American University, before the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Mar. 8, 2007, citing a study by James L. Perry, Debra Mesch, and Laurie Paarlberg, "Motivating Employees in a New Governance Era: The Performance Paradigm Revisited," *Public Administration Review:* 66 (July/Aug. 2006), pp. 505-514.

III ($154,600). Senator Voinovich said the bill would keep SL and ST employees "on equal footing" with members of the SES in terms of pay and performance management.[16]

Market-Based Pay Reforms

Another current issue in federal pay is the development of more market-based pay systems. Comparison of federal pay rates to local markets is not new. Special salary rates (higher rates of basic pay) for GS positions may be established by OPM "to address existing or likely significant handicaps in recruiting or retaining well-qualified employees." The rates may be established by job series, speciality, grade level, and geographic area and are to address staffing problems caused by such factors as non-federal pay rates that are significantly higher than federal pay rates and working conditions or the nature of the work involved that are undesirable. Among the occupations that currently receive special rates are clerical, engineers, and various medical officers. Also, as noted previously, since the passage of FEPCA in 1990, the GS system as a whole has become at least somewhat market based, with federal salaries matched to their private sector counterparts in 32 local pay areas. However, the federal-private sector comparison made through FEPCA is done across the entire set of occupations in each area, not individual jobs. Some agencies are attempting to make their pay systems even more market based by focusing on individual jobs, but sometimes those efforts have met with less than full success.

For example, in July 2004, Congress enacted the GAO Human Capital Reform Act of 2004 (P.L. 108-271), which gave the Comptroller General broad authority to set the pay for employees at the Government Accountability Office (GAO). One of several listed factors that the Comptroller General was required to consider in determining the amount of annual pay adjustments was "the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area." Shortly after the legislation was enacted, GAO contracted with the Watson Wyatt Worldwide consulting firm to conduct a market-based pay study, which reportedly concluded that certain GAO employees were already paid more than the relevant market. Based on the results of that study, the Comptroller General decided to deny annual basic pay increases to more than 300 GAO employees.

At a May 22, 2007, hearing before this subcommittee, Charles H. Fay, Chair of the Human Resource Management Department at the Rutgers University School of Management and Labor Relations, testified that the Watson Wyatt pay study and how it was used by GAO management were flawed in several respects. Problems cited related to how the GAO jobs were described and matched to jobs in the market pay data, the lack of involvement by GAO employees in the description and matching process, the quality of the "off the shelf" data that Watson Wyatt used in the study, and GAO's overall strategy of being an average paying employer when it considers itself as one of the top agencies in the federal government and at the center of government decisionmaking. This experience suggests that care must be taken in determining the relevant "market" for an agency and the pay relationship of individual federal occupations to the market.

---

[16] Statement of Senator George Voinovich, *Congressional Record*, daily edition, vol. 153, Mar. 29, 2007, p. S4180.

Other Proposed Reform Efforts

Still other types of federal pay reforms might surface in the near future. In May 2007, the Director of OPM submitted a legislative proposal that would, if enacted, extend locality pay to white-collar federal employees in what are known as "non-foreign" areas (i.e., areas outside the continental United States, such as Alaska, Hawaii, Guam/Northern Mariana Islands, the U.S. Virgin Islands, and Puerto Rico).[17] Since 1948, white-collar employees in these areas have received a tax-free, statutorily based pay supplement (5 U.S.C. §5941) predicated on differences in cost of living as compared to Washington, DC. The purpose of the supplements (which can be as high as 25% of base pay) is to improve recruitment and retention in those non-foreign areas, and they are not counted toward an employee's "high three" salary for retirement calculations. Therefore, shifting to a cost of labor-based locality pay system where locality payments are taxed and count toward retirement calculations would represent a major transition in how employees in these areas are paid. OPM said this change was needed because of "perceived disparities between the pay and retirement benefits" for employees within and outside the continental United States. OPM also pointed out that the non-foreign COLA program has been "fraught with litigation, and has cost the Federal Government hundreds of millions of dollars in settlement payments and attorney fees." One recent settlement resulted in a new cost-of-living survey that may cause further litigation. If enacted, the proposed legislation would phase in locality pay (and decrease non-foreign COLA payments) over a seven-year period, and is expected to cost $109 million over the next 10 years according to OPM's proposal.

More generally, a recent survey of 55 federal human resource officials revealed that a majority believe the GS pay system is no longer adequate, and that "a more performance-sensitive and market-sensitive pay system should be a long term goal."[18] Although one-third of the respondents said that the GS system should be eliminated immediately, most of the officials believed that "the process to design and implement a new pay system should be slow and deliberate and that credible performance management systems and appraisals should come first." The officials' concerns about those reforms reportedly stemmed from recent experiences at DOD and DHS, and the implementation of changes to SES pay that were perceived as rushed and forced on participants.

- - - - -

Mr. Chairman, that concludes my prepared statement. I would be happy to answer any questions that you or other Members of the subcommittee might have.

---

[17] Letter from Linda M. Springer, Director, OPM, to the Honorable Richard B. Cheney, President of the Senate, May 30, 2007.

[18] Partnership for Public Service and Grant Thornton, *Federal Human Capital: The Perfect Storm*, July 2007, available at [http://ourpublicservice.org/OPS/publications/viewcontentdetails.php?id=118].

Appendix 1: Major Federal White-Collar Pay Schedules

Pay Schedule	Number of Employees (Mar. 2007)	Base Pay Adjustment Mechanism	Availability of Locality Pay	Salary Limitations (Jan. 2007)	Total Compensation Limitations (Jan. 2007)
General Schedule (GS)	1,204,608 (GS only) 1,329,684 (GS and related)	Employment Cost Index (ECI) Sept. data minus 0.5%	Yes	Base Pay: GS-1, step 1 ($16,630) to GS-15, step 10 ($120,981) --- Locality Pay - Wash. DC pay area: GS-1, step 1 ($19,722) to GS-15, step 10 ($143,471) --- Base pay cannot exceed Executive Schedule Level V (EX-V) ($136,200) (5 U.S.C. §5303(f)). --- Base pay and locality pay combined cannot exceed EX-IV ($145,400) (5 U.S.C. §5304(g)(1)).	Total compensation (salary plus bonuses) cannot exceed EX-I ($186,600) (5 U.S.C. §5307(a)(1)).

Pay Schedule	Number of Employees (Mar. 2007)	Base Pay Adjustment Mechanism	Availability of Locality Pay	Salary Limitations (Jan. 2007)	Total Compensation Limitations (Jan. 2007)
Senior Level (SL) and Scientific or Professional (ST)	928	ECI (Sept. data) minus 0.5%. Annual adjustment may be provided at the discretion of agency heads.	Yes. The Pay Agent may extend locality pay to SL and ST and has done so each year since 1994.	Base pay: $111,676-$145,400 ---------- Locality pay - Wash. DC pay area: $132,437-$154,600 ---------- Base pay ranges from 120% of the minimum base pay for GS-15 to EX-IV (5 U.S.C. §5376). ---------- Base pay and locality pay combined cannot exceed EX-III ($154,600) (5 U.S.C. §5304(g)(2)).	Total compensation in agencies whose performance appraisal systems have been certified by the Office of Personnel Management (OPM) may be up to the Vice President's salary ($215,700) (5 U.S.C. §5307(d)). ---------- In agencies whose performance appraisal systems have not been so certified, total compensation may be up to EX-I ($186,600) (5 U.S.C. §5307(a)(1)).

Pay Schedule	Number of Employees (Mar. 2007)	Base Pay Adjustment Mechanism	Availability of Locality Pay	Salary Limitations (Jan. 2007)	Total Compensation Limitations (Jan. 2007)
Senior Executive Service (SES)	7,323 (6,421 Career)	Automatic pay increases no longer occur; an agency may increase a senior executive's pay, as long as his or her performance or contributions warrant an increase, in order to maintain the individual's relative position within the SES pay rate range. (5 CFR 534.404(b)(3))	No	Base pay: $111,676-$154,600 or $168,000 --- Base pay in agencies whose performance appraisal systems have been certified by OPM may be up to EX-II ($168,000). --- In agencies whose appraisal systems have not been certified, base pay may be up to EX-III ($154,600).	Total compensation in agencies whose performance appraisal systems have been certified by OPM may be up to the Vice President's salary ($215,700) (5 U.S.C. §5307(d)). --- In agencies whose appraisal systems have not been certified, total compensation may be up to EX-I ($186,600) (5 U.S.C. §5307(a)(1)).
Executive Schedule (EX)	475	ECI (Dec. data) minus 0.5%, but cannot be (1) more than the GS pay increase, (2) greater than 5%, or (3) less than zero.	No	EX-I: $186,600 EX-II: $168,000 EX-III: $154,600 EX-IV: $145,400 EX-V: $136,200	EX employees are not eligible for locality pay. Presidentially appointed and Senate confirmed EX members are not eligible for awards and bonuses.

Sources: Data on the number of employees in each pay system are from OPM's FedScope database, accessible at [http://www.fedscope.opm.gov/employment.asp].

Appendix 2: Salary Relationships Between Major Federal White-Collar Pay Schedules

Pay Schedule	Maximum Base Pay January 1991*	1991 Relationship to Other Schedules	Maximum Base Pay (EX and SES) and Maximum Base and Locality Pay (SL, ST, GS) January 2007**	2007 Relationship to Other Schedules
EX	EX-I - $138,900 EX-II -$125,100 EX-III - $115,300 EX-IV - $108,300 EX-V - $101,300	EX-I was paid 28.2% more than ES-6; EX-IV and ES-6 received the same salary	EX-I - $186,600 EX-II - $168,000 EX-III - $154,600 EX-IV - $145,400 EX-V - $136,200	EX-I was paid 11.1% more than SES with certified performance appraisal system and 20.7% more than without certified system; EX-II and SES with certification salaries match; EX-III and SES without certification salaries match
SES	ES-6 - $108,300 ES-5 - $104,600 ES-4 - $100,500 ES-3 - $95,300 ES-2 - $91,200 ES-1 - $87,000	ES-6 received 11.3% more than GS-18; GS-18 salary was between ES-3 and ES-4	$154,600 (without certified performance appraisal system); $168,000 (with certified system)	SES salary without certified performance appraisal system is same as SL and ST

CRS-18

Pay Schedule	Maximum Base Pay January 1991*	1991 Relationship to Other Schedules	Maximum Base Pay (EX and SES) and Maximum Base and Locality Pay (SL, ST, GS) January 2007**	2007 Relationship to Other Schedules
GS-16 to GS-18 (1991) SL and ST (2007)	GS-16, step 9 - $89,787 GS-17, step 5 - $94,104 GS-18 - $97,317	GS-18 pay was 21.4% more than GS-15, step 10 GS-16, step 1 was 11% less than GS-15, step 10	SL and ST - $154,600	SL and ST - 7.8% more than GS-15, step 10 (Washington, DC, pay area) SL and ST - 6.3% more than GS-15, step 10 (San Francisco pay area) Minimum base and locality pay for SL and ST of $132,437 (Washington, DC, pay area) - 8.3% *less* than GS-15, step 10 (Washington, DC, pay area) Minimum base and locality pay for SL and ST of $145,547 (San Francisco pay area) - 0.10% *more* than GS-15, step 10 (San Francisco pay area)

Pay Schedule	Maximum Base Pay January 1991*	1991 Relationship to Other Schedules	Maximum Base Pay (EX and SES) and Maximum Base and Locality Pay (SL, ST, GS) January 2007**	2007 Relationship to Other Schedules
GS-15, step 10	$80,138	GS-15, step 10 was paid 17.6% more than GS-14, step 10	$143,471 (Washington, DC, pay area); $145,400 (San Francisco pay area); steps 7-10 are all at this salary	GS-15, step 10 (Washington, DC, pay area) is paid 17.6% more than GS-14, step 10 (Washington, DC, pay area) GS-15, step 10 (San Francisco pay area) is paid 8.5% more than GS-14, step 10 (San Francisco pay area)
GS-14, step 10	$68,129	See above	$121,967 (Washington, DC, pay area); $134,042 (San Francisco pay area)	See above

*Maximum base pay for EX, SES, and GS grades.
**Maximum base pay for EX and SES. Maximum base and locality pay for SL and ST, and GS. (EX and SES are not eligible for locality pay.)

Notes: P.L. 101-509, the Federal Employees Pay Comparability Act of 1990, combined grades GS-16, GS-17, and GS-18 into the senior-level (SL) pay schedule. Prior to that change, GS-16 had nine steps; GS-17 had five steps, and GS-18 had one step. Locality-based comparability payments began in January 1994. The gap between private and public sector pay is largest in the San Francisco pay area. The 1991 salary data are from U.S. Office of Personnel Management, *Pay Structure of the Civil Service*, Mar. 31, 1991.

Mr. DAVIS OF ILLINOIS. Well, thank you all so very much.

Those buzzers have been votes that we actually have, but they are procedural votes. One is a quorum call. The other one is a motion to adjourn. I don't think we are going to be doing that, so I am just going to skip the vote and continue.

Let me thank you for your testimony. Ms. Kelley and Mr. Cox, if both of you would respond to this question: how would you evaluate the implementation of pay for performance and the market-based compensation studies that we have gotten up to this point? In an overall sense, in your analysis, how is pay for performance working?

Ms. KELLEY. In NTEU's experience, the agencies that have moved in this direction have failed miserably and have caused a lot of problems among the employees. It has caused morale to decrease even lower than it had been otherwise. There is no credibility with employees that there is any interest on the part of the agencies in putting a system in place that would meet the employees' criteria.

And for employees, it is very simple. They are looking for a system that is fair, that is credible, and that is transparent. They want to know that at the beginning of the year if they are told that they do A, B, and C, that they will have excelled, and that the recognition and reward at the end of that time will be X, they expect that the X will be there. That is not the case.

Many of the demonstration projects and alternative systems that OPM reports on failed to tell you is that many of those projects were given additional funding in order to be able to pay the top performers, and not to have to decrease or flat-line the pay of other employees who were doing not only the job that was expected of them but excelling at their job also.

You know, I must say I was very surprised and disappointed to hear Director Springer say two things. No. 1, she said that employees today under the current system are paid to show up. I think that is an insult to the Federal employees who work hard every day. They not only meet the expectations laid out for them, but they work hard to excel. They shouldn't have to guess what it is they have to do to excel. That would be very clear and specific and transparent, and they should be able to reach those goals if they so choose.

The other example she gave, though, that was very surprising to me was about the SESer and the grade 14 working on a project together, and that there is a way to reward the SESer but not the grade 14. Well, NTEU does not represent SESers, but everyone that I have ever talked to does not applaud the system that is in place for them, their pay banding system. In fact, what they do is trash it. They have done their own study and analysis, and all of the results show that they are not satisfied with that system that seems to be held out as a model by OPM.

The grade 14, the example that they cannot be compensated other than with the lump sum cash is absolutely false. This is one of the sore points with NTEU and with Federal employees there are so many flexibilities that agencies have the authority to use today that they do not use. OPM should be leading the way, not only encouraging but providing them with the support, assistance as to how to do this.

One of the ways to reward that grade 14 is with a high-quality increase or a step increase. That does go into their base pay. They carry it forward. It is part of their retirement contributions. It is not a one-time cash payment.

So, you know, that is just one example of misinformation that is out there that the SES system is so good and should be used for all Federal employees. SESers will not tell you that.

Mr. COX. Mr. Chairman, in DOD obviously at this point none of our bargaining unit has been put under pay for performance. There has been the demonstration project, and, again, as Ms. Kelley said, additional money was given in those projects, so therefore employees got a little more money and seemed to like it. Then, as the money dried up, it did not happen and the employees felt discriminated against.

I am a registered nurse. I worked for the VA Medical Center in Salisbury for 23 years as a registered nurse. Registered nurses in the VA are under that type of performance pay and the promotion process. I saw in my 23 years registered nurses that did all the criteria, worked very hard, achieved the goals that were established by regulations for them to be paid and to be promoted, a pay for performance system. It would go to the Professional Standards Board, they would vote the person met the criteria, but the medical center director would stamp it disapproved. I don't want to do this, I don't have the money.

That goes all the way back to the process, too, as Director Springer talked about bonuses and performance awards. Throughout the Federal Government I hear frequently about SESers and the higher grade employees and performance awards and things of that nature, but a lot of our members are housekeeping aids. They are those wage-grade employees that Mr. Lynch was speaking of earlier that are not getting recognized in any way whatsoever. They don't get performance awards, even with an outstanding performance, because, again, some manager says, I don't want to spend the money that way, I would prefer to spend it this way.

So pay for performance doesn't work. It has not worked well in these demonstration projects. I have personally experienced it in my Federal career that it is not the way to go. There has to be a system, and I believe that is why Congress established the merit system in the beginning, so that the work force would not be hooked to the political system.

Mr. DAVIS OF ILLINOIS. Thank you both very much.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

You know, at the outset I just want to say thank you, Mr. Chairman, for holding this hearing. I was an iron worker for 20 years, and I firmly believe that the American workers don't have a better friend in the Congress than you, Mr. Chairman. I appreciate all the work you do.

Mr. Chairman, following the implementation of the civilian personnel system reform—they call it reform; changes are more likely—at the Department of Homeland Security in 2002 and the Department of Defense in 2003, the current administration has continually sought to erode the rights and protections afforded to our Federal civilian employees at other Government agencies. Most no-

tably, in July 2005 the White House circulated draft legislation to abolish the longstanding general schedule pay system across the Federal Government by 2010, in favor of a variety of untested and extremely subjective pay for performance compensation schemes.

While the proposal was never enacted, recent agency personnel reforms have evidenced the administration's continued willingness to experiment with alternative compensation systems, and specifically pay for performance, all at the expense of the Nation's nearly two million Federal civilian employees, their pay, and their future retirement security.

As a former union president, I can tell you that pay for performance implementation is simply not in the best interest of the employee morale. It is not what its title implies. It destroys workplace unity and productivity. And with employee pay becoming highly dependent on subjective assessments and evaluations, it often results in vastly different salaries for employees with identical job duties and seniority.

As a Member of Congress and the Oversight Committee, in particular, I can tell you that the implementation of such a highly subjective pay system across our Federal agencies defies common sense.

Remember, this committee not very long ago, a few weeks ago, amidst reports that officials from the White House's Office of Political Affairs were conducting political briefings on Federal agency property—these are the same people that are going to review the employee performance. Specifically, earlier this year our committee, as well as the Office of Special Counsel, determined that they had meetings on how to help Republican candidates win future elections, and it was conducted on General Services Administration property in the presence of the GSA Administrator Lurita Doan and over 30 other GSA political appointees. These would be the people who would be making judgments on the performance of these employees.

During a subsequent hearing in June of this year we examined allegations that Ms. Doan sought retaliation against GSA officials that were cooperating with the Special Counsel and investigators. According to an interview transcript released by the Special Counsel's office, the head of GSA, Ms. Doan, asserted that, "Until extensive rehabilitation of their performance occurs, they will not be getting promoted and will not be getting bonuses or special awards or anything of that nature." This is retaliation against employees, and the Government. The Bush administration is trying to put this system in over our Government employees, Defense Department and other employees.

In addition to the GSA investigator, our committee is continuing to investigate reports that at least 20 other political briefings were given to officials of at least 15 other Federal agencies. The implications are clear: either you play ball with this administration or you don't get the raises, you don't get your bonuses.

This is going back to the early 1920's and the patronage and corruption that was attached to these jobs before we had reform. That is a step we should not be taking.

Mr. Chairman, for these reasons I am very concerned about this administration's inclination toward abandoning the current Federal pay system in favor of a pay-for-patronage compensation structure.

Again, I thank you for holding this hearing.

I just want to say that I remember the first changes that were put in on our Defense Department employees and Homeland Security employees. What happened is they were stripped of their rights to bargain collectively. Their rights were taken away, and the reason that was given by the Republican administration for stripping them of their rights was that they could not be trusted. They could not be trusted. The national security would suffer if the Defense Department and Homeland Security, the very employees who are on the front lines, they could not be trusted with negotiating over the terms and conditions of their own employment. That is a slap in the face. That is a giant step backward. That will cause good-quality employees to walk away from Government service.

I think that is something that we should reject. If there are going to be standards for giving people raises, they should be objective so that anyone looking at the performance of that employee will know whether they deserve a raise or they don't deserve a raise. That should not be allowed to be a decision within the mind of someone who is holding Republican party meetings in Government offices on Government time at Government expense.

Mr. Chairman, I just think we should reject this proposal and I yield back the balance of my time.

Mr. DAVIS OF ILLINOIS. Well thank you very much, Mr. Lynch. I would have been pleased to have been a member of your union.

Mr. LYNCH. I am sorry, Mr. Chairman?

Mr. DAVIS OF ILLINOIS. I said I would have been pleased to have been a member of your union.

Mr. LYNCH. Thank you.

Mr. COX. I would have, too, Mr. Chairman.

Mr. DAVIS OF ILLINOIS. Let me ask you, Mr. Copeland, could you share what the thinking may have been around the idea that executive schedule positions are not eligible for locality pay?

Mr. COPELAND. Sure. Essentially, the decision was made that these executive schedule positions really should be paid on a national basis rather than a local basis, but it is interesting when you look at where these people are. 402 of the 475 people in the executive schedule are in Washington, DC. In fact, 470 of the 475 are in Washington, Virginia, or Maryland. So it is basically a pay system for people that are in this area.

Mr. DAVIS OF ILLINOIS. Yes. I guess one could kind of understand, because there aren't many people who are going to be in other locations.

Mr. COPELAND. Right.

Mr. DAVIS OF ILLINOIS. Because this is kind of where the action is. Well, let me ask you, this talk about pay compression and its impact, does it limit unrealistically the ability of certain categories of individuals to continue to progress relative to compensation for their work and experiences?

Mr. COPELAND. I believe it does. One of the best examples of that would be to compare people in different pay systems. For example, in 1964, when the executive schedule was set up, the executive

schedule five, which is the lowest level of the executive schedule, were paid 6.1 percent more than the top end of the GS system, so there was a gap between the executive schedule and the regular GS.

Right now executive schedule five is paid 13.5 percent less than the top of the general schedule. Even looking within the general schedule, you have nine locality pay areas where people cannot get locality pay increases, basically that they are due, because they are bumping up against the cap, which is executive schedule four for the GS–15 step 10's. And in San Francisco it has even been down to step seven.

Mr. DAVIS OF ILLINOIS. Are the administrative law judges sort of caught in a bind in a sense in terms of comparability? How do they rank or rate with other individuals who hold the title of law judge and their compensation?

Mr. COPELAND. It is hard to compare regular judicial salaries to administrative law judge salaries because they are really apples and oranges, but administrative law judges are among the most compressed of all the pay schedules. One of the statements that was submitted for the record today documents that much better than I can, but I could just note that administrative law judges are paid basically at the same level. If you look in the Federal Employees Almanac, for example, there is a listing for the top, I think, three or four levels of administrative law judges. They are all paid exactly the same, so there is no advantage to moving above a certain level. The same thing that used to occur in the Senior Executive Service where, once you got to a certain pay level, there was no advantage to going up to higher levels.

Mr. DAVIS OF ILLINOIS. Ms. Kelley, let me just revisit if I could a moment. You did not express a great deal of confidence in the current implementation of the pay for performance. Do you think it can be made to work? If so, what would need to change about it? Or does it just need to be junked and say it is not going to work?

Ms. KELLEY. Well, I have not seen anything yet that I can say I am convinced would work, but I would also not say that the current system is perfect. We have said this to the administration and we have said it to Homeland Security when we were going through the meet and confer process in Homeland Security. We said to them, look, identify the valid problems you have with the GS system and we will sit and work with you to change those. But they have to be valid problems, not just change for the sake of change.

What we really have heard throughout any conversation we have ever had is this focus of just wanting to dismantle the entire system. They really don't want to fix it or have an up-front conversation about what needs to be fixed.

They say, for example, that they cannot compensate the highest performers. Well, I want the highest performers compensated, too, so we would welcome the opportunity to be in that conversation. But the answer is not scrap the current system and then ask us to take on faith some unknown system.

So I have not seen anything that I am convinced will work, but I want a system that allows employees to be compensated a fair wage at market rates compared to the private sector, and that is

not happening today. So, I am interested in being in that conversation.

Mr. DAVIS OF ILLINOIS. Well, Mr. Cox, we all continue to suggest that we want Federal employment to be comparable with private sector in terms of the ability to recruit to get some of the best and the brightest and to make sure that the Federal work force is as productive and as effective as any work force that we would find any place. Do you think we can accomplish that under the pay for performance system?

Mr. COX. The pay for performance system will not accomplish that for you. Pay for performance in reality is about lowering pay and controlling pay, sir. It is about being able to give money to who you want, how you want, when you want. We all understand those type systems.

The GS system may have its flaws, but at this point it is the best system that we have and we need to work to improve that again, not just throw it out, scrap it up, tear it down, and start from scratch again. The system does work. It recognizes employees. There are many things in the system, again, that is not used by the managers and the agencies to give within-grade increases and to recognize employees because it comes back to how the agencies want to spend their money instead of recognizing employees.

Mr. DAVIS OF ILLINOIS. Well, thank you all so much. I always thought that politics was giving money to who you wanted to when you wanted to where you wanted to. Sounds like you are defining a system that is fraught with some political implications. But it has certainly been a pleasure to have you all come and testify. We appreciate your patience and we apologize for any inconvenience that we may have caused with changing our schedules.

Thank you all so much.

This hearing is adjourned.

[Whereupon, at 5:08 p.m., the subcommittee was adjourned.]

○